Supreme Court, U.S.
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No.

In the

Supreme Court of the United States

October Term, 2005

LOUISIANA-PACIFIC CORPORATION,
Petitioner,

v.

LESTER BUILDING SYSTEMS, a division of Butler Manufacturing Company, and Lester's of Minnesota, Inc.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a district court may, as the Second, Third, and Eleventh Circuits have held, enter an injunction against a state court proceeding that it has found will "directly interfere with and seriously impair" its continuing jurisdiction over the implementation of a class settlement by awarding to a third party damages for injuries that were addressed in the settlement, *or whether*, as the Ninth Circuit held in this case, the Anti-Injunction Act (28 U.S.C. § 2283), bars the entry of such an injunction?

PARTIES TO THE PROCEEDING

Petitioner Louisiana-Pacific Corporation ("LP") has no parent corporation. Barclays Global Investors, N.A. owns more than 10% of LP's stock. Respondents are Lester Building Systems and its affiliated builder, Lester's of Minnesota, Inc. (collectively, "Lester"). In the court below, the State of Minnesota appeared as *amicus curiae*.

Although petitioner and respondent are the only parties actively involved in the current dispute, this appeal arose out of the district court's continuing jurisdiction over a class action settlement in a case in which the above-named parties as well as the following have been involved:

Plaintiffs: Sandpiper Village Condominium Corp., a Florida corporation and all others similarly situated; Craig Ostergren, co-conservator for Keith Ostergren, a minor, on behalf of themselves and all others similarly situated; Cheryl Ostergren, co-conservator for Keith Ostergren, a minor, on behalf of themselves and all others similarly situated; Keith Ostergren, a minor; Byron Alton; Susan Alton; Cpc Ltd., Washington Real Estate Developer. *Defendant*: Harry A. Merlo. *Defendant-Intervenors*: Insurance Company of North America; Cigna Insurance Company of North America; Northwestern Pacific Indemnity Company, Agricultural Insurance Company; National Union Fire Insurance Company; Lexington Insurance Company; Granite State Insurance Company. *Plaintiff-Intervenors*: James W. Gilles; Dale J. Matherly; Douglas Meckling; Michael L. Watts.

In addition, the district court's injunction in this case prevented entry of a portion of a jury award in a proceeding pending before a Minnesota state court. See *Lester Building Systems, et al., v. Louisiana-Pacific Corp., et al.*, McLeod Co. No. C6-00-335 (Minn. D. Ct.). In addition to the parties listed on the front page of this petition, the parties to that state proceeding included Canton Lumber Company.

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PETITION FOR WRIT OF CERTIORARI

Louisiana Pacific Corporation ("LP") respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The divided opinion of the court of appeals (App. 1a-69a) is reported at 428 F.3d 831, with the dissent beginning at App. 44a. The opinion of the district court granting LP's

motion for an injunction barring entry of a judgment in Minnesota state court is reported at 234 F. Supp. 2d 1170 (App. 70a-91a).

JURISDICTION

The opinion of the court of appeals was filed on October 24, 2005. App. 2a. An order denying rehearing and rehearing en banc was filed on January 20, 2006. App. 92a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The district court issued the injunction under authority of the All Writs Act, 28 U.S.C. § 1651(a), which provides:

§ 1651. Writs

> (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

In vacating that injunction, the court of appeals relied on the Anti-Injunction Act, 28 U.S.C. § 2283, which provides:

§ 2283. Stay of State court proceedings

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

STATEMENT OF THE CASE

At issue is the appropriate limit that the Anti-Injunction Act, 28 U.S.C. § 2283, places on a federal district court's ability to oversee and protect a comprehensive and complex nationwide class action settlement. The district court concluded that a portion of a Minnesota s ate court jury verdict

received by respondent Lester would, if awarded, give a subgroup of class members duplicate compensation for injuries that were settled years before. The district court, which retained continuing jurisdiction over the earlier settlement, therefore enjoined that part of the verdict from being entered as a judgment.

By a 2-1 vote, a panel of the court of appeals reversed, holding that no exception to the Anti-Injunction Act applied here. It held that (1) even though the procedure set up in the Class Settlement was ongoing, and even though the district court explicitly retained jurisdiction over the implementation of that procedure, the "in aid of its jurisdiction" exception did not apply because the Class Settlement had been "resolved," and (2) the "to protect or effectuate its judgment" exception did not apply because the court viewed that exception to apply solely to the parties to the initial settlement, not third parties who benefited from that settlement or to a *res* associated with the benefits of the settlement itself.

1. In 1996, the United States District Court for the District of Oregon approved a nationwide class settlement of lawsuits (the "Class Settlement") alleging damages associated with the failure of certain siding materials ("Inner-Seal Siding") manufactured and sold by Petitioner Louisiana-Pacific Corporation ("LP"). In that settlement, the owners of buildings constructed with Inner-Seal Siding prior to January 1, 1996, became entitled to recover the costs associated with certain repairs and replacements of that siding. The Class Settlement established a sophisticated claims process under which class members could identify, establish, and recover damages associated with their Inner-Seal Siding. Under the Class Settlement, LP has paid more than $500 million in claims since 1996. App. 3a-6a, 72a-74a.

In return for LP's financial contributions and its concession of defenses, the Class Members released LP from all claims (with certain exceptions not relevant here) associated with their use of Inner-Seal Siding. In addition, LP ensured

that the Class Settlement operated to release not only LP but also builders and others in the chain of distribution. As the court of appeals noted, that provision "was included to foreclose the possibility that class members would bring claims against businesses located in the Inner-Seal Siding chain of distribution." App. 6a, 73a.

The Class Settlement included a number of contingencies. For instance, it established a process under which LP could make periodic decisions whether to make additional payments into a Settlement Fund in exchange for extending the terms of the Class Settlement. See App. 4a n.1, 73a.

To provide oversight of the settlement process, the District Court appointed a Special Master, and it also retained

> exclusive and continuing jurisdiction over the Actions and Parties, including all members of the Class, the administration and enforcement of the settlement, and the benefits to the Class, including for such purposes as supervising and implementation, enforcement, construction, and interpretation of the Settlement Agreement.

App. 6a; see also App. 73a-74a.

2. In March 2000, a manufacturer of hog barn building kits (Respondents Lester Building Systems and its affiliated builder, Lester's of Minnesota, Inc. (collectively, "Lester")), brought an action against LP in Minnesota state court seeking damages for its alleged losses associated with the use of Inner-Seal Siding in constructing several thousand hog barns for customers during the years 1991-96. *Lester Building Systems, a division of Butler Manufacturing Company, and Lester's of Minnesota, Inc. v. Louisiana-Pacific Corporation and Canton Lumber Company*, McLeod County Dist. Ct. Civil File No. 43-C6-00-000335. App. 7a, 74a-75a.

There is no dispute that Lester is one of those entities within the "chain of distribution" against whom class members released all claims in the Class Settlement. There is also

no dispute that a substantial portion of Lester's customers were members of the class bound by the class settlement. Based on those facts, LP filed pretrial motions to exclude claims for the repair costs, but the trial court denied the motions, and further ruled that the effect of the class action was a question for the jury. App. 7a-8a, 75a.

At trial, Lester contended that business and moral compulsions required that it remove and replace the LP siding on every barn that it had built. It also argued that the class action did not preclude an award of damages allowing Lester to do just that. Lester offered evidence that removal and replacement of the siding on every barn would cost $13.2 million, with approximately $2 million of that amount being used for barns built after January 1, 1996 (*i.e.* property not covered by the Class Action Settlement). Lester offered testimony from its president that Lester intended to use the damages awarded in this state court lawsuit to "fix these buildings" and get "the farmer what he's entitled to." App. 8a-9a, 75a-77a.

At the conclusion of Lester's case, the trial court denied LP's directed verdict motion as to those damages. App. 9a, 78a. LP then presented its case, which included testimony regarding the terms and administrations of the Class Settlement and the remedy established to address claims by the Class Members. App. 10a. At the close of evidence, the state court instructed the jury that repair costs were not recoverable unless the barns had been built in or after 1996, or the jury found either that the class settlement fund would be insufficient to pay an owner's claim or that the barn would suffer defects after January 1, 2003. App. 10a-11a; 78a-79a.

After deliberating, the jury awarded Lester $29.6 million in damages. According to the special verdict form, $16.4 million of that verdict included compensation for (1) Lester's lost profits, (2) the amount Lester paid for Inner-Seal siding it purchased during the years in question, and (3) for a loss of goodwill. See App. 11a-12a & n.7.

The remaining $13.2 million represented the damages that Lester requested for building and repair costs for every building. As the court of appeals recognized, the jury failed to separate buildings constructed on or after January 1, 1996 (*i.e.* those outside of the Class Action, which encompassed most of the awarded repair costs) from those built before that date (*i.e.* those within the Class Action), effectively finding that none of Lester's damages were precluded by the Class Settlement. App. 11a-12a; see also App. 79a-80a.

On October 24, 2002, the state trial judge filed Findings of Fact, Conclusions of Law, and an Order for Judgment based on the jury verdict, but it refrained from entering the judgment for 30 days (as required by state law), and later extended that entry further pending the disposition of post-trial motions. App. 12a.

3. On November 6, 2002, LP filed with the United States District Court for the District of Oregon a motion to enforce the Class Settlement. See App. 12a. LP asked the Court to enjoin the Minnesota state court from entering judgment on that portion of the verdict representing damages that had been resolved in the Class Settlement (i.e., damages associated with the repair of buildings that had Inner-Seal Siding installed prior to January 1, 1996). App. 71a.

In a December 13, 2002, Opinion, Order, and Permanent Injunction, the district court granted LP's motion in part, and entered an "injunction enjoining the Minnesota state court from entering judgment on the portion of the jury's damages award that is encompassed in and precluded by the class action settlement agreement." App. 71a-72a, 83a. After reviewing the facts leading up to the state court jury verdict, the district court concluded that none of Lester's arguments permitted it to recover the same "relief in Minnesota that had, since 1996, been encompassed by the nationwide class action settlement." App. 81a.

The district court concluded that, if entered, the relevant portion of the jury verdict would "directly interfere with and

seriously impair [its] ability to supervise, implement, enforce, construe, and interpret the class action settlement over which [it] retained exclusive jurisdiction." App. 88a. Because the court found that an injunction would be "both authorized and necessary to protect the integrity of this court's Order, Final Judgment and Decree in the nationwide class action," App. 83a, it concluded that the "in aid of its jurisdiction" exception to the Anti-Injunction Act allowed entry of an injunction here. App. 87a-88a.

The district court also noted that entry of judgment on this portion of the state court verdict was necessary in order to protect and effectuate its judgment in the class action. The verdict, the court found, would "circumvent[ ] the settlement agreement and the elaborate negotiated claims resolution procedures contained therein." App. 88a.[1]

4. Lester appealed to the United States Court of Appeals for the Ninth Circuit. In a divided 66-page decision in which all three panel judges wrote opinions, the court of appeals reversed.

a. In a majority opinion written by Judge Clifton (joined by Judge Silverman), the court held, first, that the district

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[1] In Minnesota State Court, LP argued in post-trial motions that the jury's verdict was inconsistent with applicable law and the state court's own rulings. The state court denied LP's motions, however, and, in late January of 2003, entered a final judgment in Lester's case. *See* ER 810-39. The judgment awarded Lester $20 million (that portion of the judgment on the jury's verdict that had not been enjoined by the district court in this case), and LP filed an appeal in the Minnesota Court of Appeals, which later affirmed the state trial court's judgment. *See Lester Bldg. Systems v. Louisiana-Pacific Corp.*, 2004 WL 291998 (Minn. App., Feb 17, 2004, *rev. denied*, No. A03-48 (Minn. S. Ct., April 28, 2004). The Minnesota Court of Appeals held that if the enjoined portions of the judgment were later entered, LP could appeal from the entry of that judgment. *Id.* at *8. LP's subsequent petition for review to the Minnesota Supreme Court was denied. *Lester Bldg. Systems, et. al. v. Louisiana-Pacific Corp.*, No. A03-48 (Minn. S. Ct. April 28, 2004) (denying petition for review).

court had subject matter jurisdiction over the case in light of its continuing jurisdiction over the Class Settlement as well as the All Writs Act, 28 U.S.C. § 1651. App. 15a-17a. The court also held that Lester had received a copy of LP's motion, which was adequate for purposes of service, and that the question of minimum contacts for Due Process purposes was intertwined with the question on the merits regarding the propriety of the injunction, so did not need to be resolved in light of the court's disposition of the case on the merits. App. 15a n.12.

The court then held that the injunction entered in this case was improper under the Anti-Injunction Act because this case did not fit within any of the Act's exceptions. App. 18a-38a. (Having reached that conclusion, the court did not resolve any of Lesters' other arguments on appeal. App. 18a n.15.)

The court held, first, that the "in aid of jurisdiction" exception to the Anti-Injunction Act did not apply in this case. Even though LP had not yet decided at the time of the injunction whether it would make a "final funding" of the settlement fund, see App. 25a n.23, 52a, the court held that "the Inner-Seal Siding class action had long since been resolved," because "the district court had several years earlier approved the settlement and entered final judgment." App. 22a. In the court's view, this meant that "the litigation was over," so "the state court action could not have interfered with the district court's consideration or disposition of the class claims," and the "in aid of jurisdiction" exception did not apply. *Id.*

The court then found that the injunction could not be justified under the "protect or effectuate [the district court's] judgment" exception to the Anti-Injunction Act. The court believed that the exception applied *solely* to instances in which concepts of res judicata and collateral estoppel would apply to bar the state proceeding. App. 28a. Because Lester had not been a party to the Class Settlement, the majority

concluded, res judicata would not bind Lester, and so this exception did not permit entry of the injunction. App. 28a-31a. If Minnesota state courts believed that Lester had an "entirely personal" claim for damages, the majority held, that damage award could not be limited by the district court, even if that award existed solely because of claims that had been previously settled by the Class Settlement. App. 31a-32a; compare App. 56a.[2]

b. Judge Reinhardt dissented. App. 44a-69a. In his view, the majority opinion drew an improperly strict distinction between the two exceptions at issue. As an initial matter, he noted that "[t]there is no question that the Minnesota state court verdict involved the relitigation of issues that had been resolved by the settlement agreement." App. 50a. Regardless of how Minnesota law characterized Lester's award of these damages, and regardless of the "inconsequential" question of whether Minnesota courts would view these damages as recoverable in light of the Class Settlement, App. 52a, "the jury's verdict conflicts directly with the settlement agreement and federal court order, and it may properly be enjoined." App. 51a. In the dissent's view, even if this particular claim for this particular legal damage theory had not been previously litigated, the *issue* had been fully re-

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[2] Judge Silverman concurred, finding that LP's decision to argue at all in state court about the applicability of the Class Settlement amounted to an election of remedy. In his view, LP was barred from bringing the federal court motion at all. App. 38a-43a. Neither Judge Clifton, however, nor Judge Reinhardt, in dissent, agreed with that position. See App. 55a n.3 (Reinhardt, J., dissenting).

In any event, as LP pointed out in the court of appeals, LP was unaware of Lester's plans to flaunt the Class Settlement and to seek repair costs for the very buildings covered by the settlement until an expert report that issued in June, 2002, two months before trial. Once Lesters' strategy became clear, LP appropriately balanced an effort to easily clarify this issue in the Minnesota courts with a prompt reference to federal court upon the first clear indication that the Class Settlement would be threatened.

solved in the settlement. App. 53a. In that circumstance, the dissent pointed out, an injunction was proper.

With respect to the "in aid of jurisdiction" exception, the dissent noted that the trial court had made factual findings regarding the effect of the Minnesota verdict on its jurisdiction. In the dissent's view, the majority failed to give proper deference to those findings. App. 48a-49a. In addition, however, the dissent pointed out that in light of the district court's clear jurisdiction over the implementation of the class settlement – an authority recognized even by the majority when it concluded that the district court had jurisdiction over this proceeding, see App. 16a-17a – the injunction itself was also "necessary in aid of [the district court's] jurisdiction." See App. 65a-66a.

That was particularly true, the dissent concluded, in light of the extensive negotiation that produced this particularly complex Class Settlement. App. 66a-67a. In essence, the dissent found (as other circuits have) that the complexity of this Class Settlement created a *res* overseen by the district court's continuing jurisdiction. See App. 67a (citing *Battle v. Liberty Nat'l Life Ins. Co.*, 877 F.2d 877, 882 (11th Cir. 1989)) (making similar analogy and permitting entry of injunction under Anti-Injunction Act). Management of a *res* within the district court's jurisdiction, the dissent believed, fell within the scope of the "in aid of jurisdiction" exception to the Act.

In conclusion, the dissent found, "the majority condones a double recovery by a subgroup of class members in direct contravention of the settlement agreement and encourages the proliferation of similar subgroups and similar lawsuits in other states." App. 44a. In addition,

> [a]t a time when Congress is expanding the jurisdiction of the federal courts over national class-action lawsuits, *see* 28 U.S.C. § 1332(d), the majority's decision severely limits the authority of district courts to protect that jurisdiction and to preserve

> the settlement agreements they have authorized. It renders federal court orders and judgments vulnerable to further litigation in state courts on a state-by-state basis, litigation that can reopen what are intended to be final damage awards and undermine the orderly implementation of complex national settlement agreements.

App. 44a.

REASONS FOR GRANTING THE PETITION

The court of appeals' opinion conflicts with the decisions of other United States Courts of Appeals, including the decisions of the Second, Third, and Eleventh Circuits, on an issue of national importance. Sup. Ct. R. 10(a). Compare *In re Baldwin-United Corp.*, 770 F.2d 328 (2d Cir. 1985); *U.S. v. International Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO* ["IBT"], 907 F.2d 277 (2d Cir. 1990; *In re Diet Drugs*, 282 F.3d 220 (3rd Cir. 2002); *Battle v. Liberty Nat'l Life Ins. Co.*, 877 F.2d 877 (11th Cir. 1989); see also *Winkler v. Eli Lilly & Co.*, 101 F.3d 1196 (7th Cir. 1996).

In case after case, this Court and the federal courts of appeals have recommended the precise steps that LP took in this case to protect its interests in the benefits of the settlement. See, e.g., *Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28, 34 n. * (2002) (suggesting that party seeking to protect against state court proceeding that would conflict with already-entered settlement should seek injunction in court that approved settlement). The court of appeals' decision runs contrary to those decisions, and by doing so it "severely limit[s]" the ability of the federal courts to secure and enforce settlements in complex class matters. App. 44a.

The question of district court authority over class settlements is important because nationwide class settlements of the sort that generate the legal question presented in this case are, as a general matter, extremely complex and carefully-

negotiated among many parties for high stakes. Such negotiations can be efficient only if the district court's continuing authority over these settlements and potentially conflicting actions is known and can be relied upon by the parties.

The decision below generates substantial uncertainties for parties entering into these settlements. Only this Court can resolve those uncertainties, and the need to do so is particularly important and urgent given last year's enactment of the Class Action Fairness Act, Pub. L. No. 109-2, 118 Stat. 4 (Feb. 18, 2005), which will substantially increase the number and scope of complex federal class action proceedings.

A. The Decision Below Conflicts with Other Circuit Courts' Interpretations of the Plain Language of the Anti-Injunction Act.

The Anti-Injunction Act permits a district court to issue an injunction "in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. In this case, the district court concluded that the jury verdict in Minnesota, if allowed to stand in full, would prevent LP from receiving the benefit of its bargain in the negotiated and court-approved federal class settlement, under which class members agreed to release all repair claims that they might have against LP and all builders and others in the chain of distribution of LP siding. Whether Lester's recovery is permitted under Minnesota law or not, the district court properly concluded that if one of those builders and distributors could recover for the *same damage* that had been released by the class settlement, it would "circumvent" and "seriously impair" the class settlement and "directly interfere with" the district court's ability "to supervise, implement, enforce, construe and interpret the class action settlement agreement over which [it] retained exclusive jurisdiction." App. 88a. An injunction in these circumstances complies with the plain language of the Anti-Injunction Act.

The court below, however, in a divided opinion, concluded that even in the presence of such findings, the Anti-Injunction Act allows injunctions of state court proceedings *only* if (1) no settlement has been executed, or (2) if a settlement has been executed, the party threatening that settlement was bound, on r*es judicata* principles, by the initial federal litigation.

No such distinction has ever been drawn in prior cases addressing similar injunctions. Rather, circuit after circuit has, in similar cases, permitted federal court injunctions of state proceedings in order to protect federal jurisdiction over class settlements.[3] That has been true for *completed* settlements, and it has been true even if the subsequent action is brought by third parties not otherwise bound by the earlier settlement. Contrary to the court of appeals' position in this case, the case law emphasizes that if the settlement is threatened, an injunction can issue.

The decision below, therefore, conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue, including most prominently *Baldwin-United*, 770 F.2d at 328 (2d Cir.); *IBT*, 907 F.2d at

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[3] In addition to the cases cited below, other federal courts have regularly approved of the use of injunctions against state court proceedings in order to protect class action settlements. See, e.g., *In re Agent Orange Prod. Liab. Litigation*, 996 F.2d 1425, 1431-32 (2d Cir. 1993) (finding removal from state court of litigation that might have a "deleterious effect on [a preexisting federal class] settlement mechanism" to be appropriate exercise of district court's authority under Anti-Injunction Act "in aid of its jurisdiction" clause) (the *Agent Orange* All Writs Act holding has arguably been abrogated by *Syngenta*, see App. 23a n.21, but the Anti-Injunction Act holding of that case remains good law); *Winkler v. Eli Lilly & Co.*, 101 F.3d 1196, 1203 (7th Cir. 1996) (Anti-Injunction Act "does not bar courts with jurisdiction over complex multidistrict litigation from issuing injunctions to protect the integrity of their rulings," including pre-trial rulings like discovery orders (which were at issue in that case)).

277 (2d Cir.); *Diet Drugs*, 282 F.3d at 220 (3rd Cir.); and *Battle*, 877 F.2d at 877 (11th Cir.).

1. The dissent in this case explicitly notes that the panel decision "create[s] a direct conflict with" *Baldwin-United*. App. 58a. In *Baldwin-United*, the Second Circuit properly recognized that third parties may be enjoined under the All Writs Act from interfering with settlements in federal cases. There, the Second Circuit approved a district court's injunction prohibiting state attorneys general from filing suit in order to represent the interests of the same consumers who were class members in a case that was nearing settlement before the district court. The Second Circuit recognized that while the class members themselves did not threaten to bring these additional suits, if parties "could derivatively assert the same claims on behalf of [class members] there could be no certaint[y] about the finality of any federal settlement." 770 F.2d at 337.

The derivative claims that the Second Circuit saw as threatening the district court's jurisdiction are the same kind of claims that the district court enjoined in this case. While the decision below argues that under Minnesota law these claims are claims of *Lester*'s and not claims of the class members, App. 31a, the claims enjoined in *Baldwin-United* also were not direct claims of the class members; the injunction in that case extended to claims seeking money damages of any kind as long as they were "arising out of" the facts presented in the district court litigation. See *id.* at 334.

The court of appeals' decision fundamentally conflicts with the decision in *Baldwin-United*. The opinion below suggests that *Baldwin-United* was distinguishable because it did not involve the Anti-Injunction Act (there were no state proceedings yet), and because it involved a settlement that was not yet complete. App. 30a n.26. Neither distinction matters, however. First, the Second Circuit explicitly relies on Anti-Injunction Act cases in analyzing the identical language of the All Writs Act, and it recognizes, as have

other courts, that these statutes need to be interpreted consistnently. 770 F.2d at 335-36; see also *Carlough v. Amchem Products, Inc.*, 10 F.3d 189, 197 (3rd Cir. 1993) (holding that the provisions are applied similarly); Historical Notes to 28 U.S.C. § 2283 (noting that the "in aid of its jurisdiction" language was added to Anti-Injunction Act in order to "conform to the language of" All Writs Act). In fact, even the court below recognized that the district court had authority under the All Writs Act here; it viewed that Act as the source of the district court's authority to consider LP's motion for an injunction in light of its ongoing jurisdiction over the Class Settlement. App. 16a-17a. There is no explanation, in light of that holding, for the court of appeals' failure to carry that same conclusion over to the Anti-Injunction Act; the presence of a final settlement in this case does not amount to an explanation.

Second, contrary to the decision below, the lack of a "final" settlement in *Baldwin-United* was not relevant to the Second Circuit's decision in that case. There, as here, the primary point of the injunction was that "there could be *no certainty* about the finality of *any* federal settlement" without the ability to enjoin the kind of derivative claims that Lester brought in this case. See 770 F.2d at 337 (emphasis added). Indeed, the Second Circuit emphasized in *Baldwin-United* that the authority to issue the injunction under the All Writs Act was clearer for the subclasses that *had* settled, and *more difficult* as to the subclasses that had not. *Id.* at 338.

The technical status of the class settlement was irrelevant to the Second Circuit, just as it should have been to the Ninth Circuit in this case. The Ninth Circuit's holding that the "in aid of" exception did not apply here because the Class Settlement was final conflicts with *Baldwin-United*, which would allow it to apply in this case. This Court should resolve the conflict.

2. For the same reason, the decision below also conflicts with the Eleventh Circuit, which has explicitly held that the

entry of a final judgment *does not* bar a district court from enjoining state court action under the "in aid of jurisdiction" exception of the Anti-Injunction Act. *Battle*, 877 F.2d at 881. In *Battle*, the Eleventh Circuit upheld an injunction issued by the district court against a state court proceeding that, in the district court's view, would have interfered with its continuing jurisdiction over the construction and implementation of a final class settlement of an antitrust complaint brought against funeral homes and insurance companies by a class of insured individuals. The class members who brought the enjoined subsequent state court proceeding argued that the "in aid of its jurisdiction" exception to the Anti-Injunction Act did not apply because a final judgment had already been entered in federal court. In applying the "in aid of jurisdiction" exception, the Eleventh Circuit rejected that proposition: "It is not true, as the state plaintiffs argue, that the 'necessary in aid of' exception is only available prior to the entry of judgment in federal court." 877 F.2d at 881 (citing cases from the Second and DC Circuits in support). The decision below reaches a contrary conclusion; the conflict with the Eleventh Circuit on this point is apparent.

The Seventh Circuit emphasized the importance of the *effect* of the state proceeding, rather than the precise stage of the federal court proceedings, when it ruled in *Winkler v. Eli Lilly & Co.*, 101 F.3d 1196, 1202 (7th Cir. 1996), that the "'necessary in aid of jurisdiction' exception should be construed 'to empower the federal court to enjoin a concurrent state proceeding that might render the exercise of the federal court's jurisdiction nugatory.'" *Id.* (citing Martin H. Redish, *The Anti-Injunction Statute Reconsidered*, 44 U. Chi. L. Rev. 717, 754 (1977)). That is precisely what would happen here if the district court is prohibited from enjoining the Minnesota verdict. As the dissent clearly explained, allowing Lester to recover these repair costs would "condone[] a double-recovery by a sub-group of class members in direct contravention of the settlement agreement and encourage[]

the proliferation of similar sub-groups and similar lawsuits in other states." App. 44a. To allow the court of appeals' decision to stand, in light of that clear conflict with the purposes and intent of the Class Settlement, and in light of the conflicts with other circuit courts, would permit third parties to flaunt the authority of federal courts in cases where consistency of treatment and predictability are critically important.

3. The decision below also conflicts with the decisions of other circuits in its refusal to extend the "protect or effectuate" exception of the statute to anything other than cases in which a "rigorous application of *res judicata* principles" would lead to a conclusion that the state suit was barred. App. 28a. The court below found that because Lester was not a party to the Settlement, it could not be bound by it, and so the damages at issue (which were, according to the majority, damages to which Lester was entitled under state law) could not be enjoined.

This approach, however, improperly excludes circumstances that other circuits have recognized as being within the plain language of the Anti-Injunction Act, but which may not necessarily present traditional *res judicata* circumstances. No strict application of *res judicata* principles is called for by the statute; while the exception is "*grounded in* the well-recognized concepts of *res judicata* and collateral estoppel," *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 147 (1988) (first emphasis added), the explicit objective of the exception is merely to "protect or effectuate" federal court judgments.

That is exactly how other circuits have approached the exception. In the Second Circuit's decision in *IBT*, 907 F.2d at 277, for instance, the court held (under the All Writs Act) that injunctions *may* issue against non-parties in order to prevent those non-parties from interfering with a district court's ability to *implement* – not merely sign – a consent decree. 907 F.2d at 280. That authority, *IBT* concluded, was necessary if the district court was to "protect" and to "effec-

tuate" its judgment. *Id.* at 280, 281. The Second Circuit therefore found authority to issue these injunctions under the All Writs Act, and did so using the precise language of the third exception to the Anti-Injunction Act. *IBT* explicitly holds that the binding effect of a prior judgment is *irrelevant* to a district court's authority to "protect" and "effectuate" its judgment as long as a subsequent action threatens the implementation of that judgment. *Id.* at 280, 281. There is no reason for that to be any less true under the Anti-Injunction Act than under the All Writs Act. Applied in this case, *IBT* would have allowed the district court to issue the injunction. The Ninth Circuit's decision to the contrary, based on the belief that third parties had to be bound by res judicata before a district court has authority to "protect and effectuate" its judgment, is contrary to *IBT*.

The decision below also conflicts with *In re Diet Drugs*, 282 F.3d at 220. In *Diet Drugs*, the Third Circuit applied the Anti-Injunction Act to bar third parties from bringing state litigation that would interfere with completion of a carefully-negotiated federal class settlement. While the settlement in that case was incomplete, nothing in that decision suggests (as does the decision below) that the Third Circuit believed that its jurisdiction over third parties was dependent on the still-incomplete status of the federal court settlement.

4. The decision below also conflicts with *Diet Drugs* because the latter decision holds, as did the dissent below, App. 66a-68a, that in complex class litigation, a settlement and the benefits thereof become much like a *res* over which the district court may exercise continuing control under this exception to the Act. *See* 282 F.3d at 235-36 and n.12. As this Court has long recognized, federal courts may protect their jurisdiction over a *res* under the Anti-Injunction Act. See *Toucey v. New York Life Ins. Co.*, 314 U.S. 118, 135-36 (1941); *Donovan v. City of Dallas*, 377 U.S. 408, 412 (1964).

The idea of a complex settlement as a *res* within the Court's jurisdiction – and therefore protectible even after the

entry of a "final" settlement – is one that the Ninth Circuit brushed aside in the decision below, App. 22a n. 20, but one on which at least the Second, Third, and Eleventh Circuits have relied in affirming the issuance of injunctions in order to protect complex class settlements. It should have been a sufficient basis for the district court's authority here.

Diet Drugs notes that "several ... courts have analogized complex litigation cases to actions *in rem*," 282 F.3d at 235-36 and 235 n.12 (citing cases). In *Battle*, the Eleventh Circuit noted that "it makes sense to consider this case, involving years of litigation and mountains of paperwork, as similar to a res to be administered . . . This lengthy, complicated litigation is the 'virtual equivalent of a *res*.'" 877 F.2d at 882 (citations omitted). And the Second Circuit reaches the same conclusion in *Baldwin-United*, 770 F.2d at 337 (same).

By ignoring this further basis for entry of an injunction under the "in aid of jurisdiction" prong of the Anti-Injunction Act, the decision below conflicts with prior decisions of the Second, Third, and Eleventh Circuits.

5. The cases cited above regularly find the exceptions to the Anti-Injunction Act to apply in situations nearly identical to the one presented in this case. Indeed, in *Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28 (2002), this Court pointed parties in LP's situation to the very approach used by LP in this case. In *Syngenta*, the Court held that the All Writs Act does not provide jurisdiction for purposes of removal under 28 U.S.C. § 1441. In reaching that conclusion, the Court held that a party faced with a state court action that would undermine a federal court settlement could seek to enjoin that state court proceeding by returning to the federal court that had retained jurisdiction over the settlement (whether entered or not). See 537 U.S. at 34, n.*.

The course followed by LP in this case, like this Court's suggestion in *Syngenta*, and like that followed by the district courts in *Baldwin-United*, *Diet Drugs*, and *Battle*, is a course

that falls within the plain language of the exceptions to the Anti-Injunction Act. The decision below conflicts with those decisions, and this Court should grant the petition in order to resolve those conflicts and clarify the authority of the district court and the rights and options of parties facing similar situations in the future.

B. THE ISSUE PRESENTED IS OF NATIONAL IMPORTANCE.

Finally, the issue presented in this petition has national importance. The panel's decision unnecessarily complicates the process of drafting, entering into, and implementing class action settlements, and it does so at a time when district courts need more authority, not less, to craft and monitor class action settlements. If the decision below stands, parties in complex product-liability class actions – most of which include significant distribution chains – could protect their interests only by accomplishing the almost-impossible task of bringing a class of all distributors into the class action settlement. Without such a third-party class, and without the authority that the district court exercised in this case, parties will find it difficult, if not impossible, to create the kind of global settlements that are necessary to ensure the resolution of these kinds of class actions, and that are critical to the efficient operation of the federal system.

The conflict created by the decision below regarding the authority of a district court in the management of class action settlements creates uncertainty and confusion for parties and district courts that are drafting, approving, and implementing class settlements. Contrary to the opinion of the court of appeals, see App. 37a, LP certainly did believe, when it agreed to this settlement, that it had "bargained" for a release from the need to pay the very kind of damages that were represented by the jury verdict enjoined in this case. The lower court's interpretation of the Anti-Injunction Act's exceptions casts substantial doubt on the ability of parties to draft and enforce the bargains negotiated in the complex

class actions. That doubt should be alleviated if the process of class settlement is to be as efficient as possible – or even possible at all.

Finally, the recent enactment of the Class Action Fairness Act, Pub. L. No. 109-2, 118 Stat. 4 (Feb. 18, 2005) (amending 28 U.S.C. § 1332(d) to extend federal jurisdiction to certain class actions alleging more than $5 million in damages), means that this issue is taking on even greater importance for the federal district courts, which are facing a substantially larger number of class actions addressing a wider scope of issues than was true before the enactment of the legislation. The uncertainty created by the decision below is magnified by this development; in combination with the conflict with other circuits generated by that decision, the importance of this issue merits this Court's attention.

CONCLUSION

For the reasons described above, the Court should grant Louisiana Pacific's petition for writ of certiorari.

RESPECTFULLY SUBMITTED this 20th day of April, 2006.

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APPENDIX

Sandpiper Condominium Assn. v. Louisiana-Pacific Corp., 428 F.3d 831 (9th Cir. 2005). 1a

Sandpiper Condominium Assn. v. Louisiana-Pacific Corp., 234 F. Supp. 1170 (D. Or. 2003) 70a

Order denying petition for rehearing *en banc* (9th Cir. January 20, 2006) 92a

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SANDPIPER VILLAGE CONDOMINIUM ASSOCIATION, INC., a Florida corporation and all others similarly situated; Craig Ostergren, co-conservator for Keith Ostergren, a minor, on behalf of themselves and all others similarly situated; Cheryl Ostergren, co-conservator for Keith Ostergren, a minor, on behalf of themselves and all others similarly situated; Keith Ostergren, a minor; Byron Alton; Susan Alton; Cpc Ltd., Washington Real Estate Developer,

Plaintiffs,

v.

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation,

Defendant-Appellee,

Lester Building Systems, a division of Butler Manufacturing Company; Lester's of Minnesota, Inc.,

Respondents-Appellants,

State of Minnesota,

Respondent-Amicus,

and

Harry A. Merlo,

Defendant,

No. 03-35058
D.C. No.
CV-95-00879

State of Minnesota,

Respondent,

Insurance Company of North America; Cigna Insurance Company of North America; Northwestern Pacific Indemnity Company, Agricultural Insurance Company; National Union Fire Insurance Company; Lexington Insurance Company; Granite State Insurance Company,

Defendant-Intervenors,

v.

James W. Gilles; Dale J. Matherly; Douglas Meckling; Michael L. Watts,

Plaintiff-Intervenors.

Appeal from the United States District Court
for the District of Oregon
Robert E. Jones, District Judge, Presiding.

***833**

Argued and Submitted
May 4, 2004—Portland, Oregon.

Filed Oct. 24, 2005.

Before: Stephen Reinhardt, Barry G. Silverman and Richard R. Clifton, Circuit Judges.

Opinion by Judge Clifton;
Concurrence by Judge Silverman;
Dissent by Judge Reinhardt

COUNSEL

Kell M. Damsgaard (argued) and Brian W. Shaffer, Morgan, Lewis & Bockius LLP, Philadelphia, Pennsylvania; Janet M. Schroer, Hoffman, Hart & Wagner, Portland, Oregon, for the respondent-appellant.

Michael H. Simon (argued) and Jeffrey C. Dobbins, Perkins Coie LLP, Portland, Oregon, for the defendant-appellee.

Mike Hatch, Attorney General, David Woodward, Assistant Attorney General, for the State of Minnesota.

***834**

OPINION

CLIFTON, Circuit Judge:

Lester Building Systems and its affiliate, Lester's of Minnesota, Inc. (collectively "Lester"), appeal an order permanently enjoining entry of judgment on a portion of a jury verdict rendered in favor of Lester and against Louisiana-Pacific Corporation ("L-P") in Minnesota state court. *In re Louisiana-Pacific Inner-Seal Siding Litigation*, 234 F. Supp. 2d 1170 (D. Or. 2002). The district court exercised its authority under the All Writs Act, 28 U.S.C. § 1651, to partially enjoin entry of the judgment on the ground that the state court award was inconsistent with the settlement reached in a prior nationwide class action involving L-P and over which the court retained jurisdiction. We conclude that the injunction violates the Anti-Injunction Act, 28 U.S.C. § 2283, and reverse.

I. Background

Class Action and Settlement

L-P manufactures building materials from industrial wood products and pulp and markets itself as an innovator in the development of new, affordable and environmentally advanced products for home and commercial builders. Begin-

ning in 1985, L-P manufactured and sold an exterior composite-wood siding designed to resemble conventional lumber for use on residential and other structures. L-P referred to this siding as "Inner-Seal Siding," a registered trademark. L-P provided a 25-year limited warranty with the purchase of Inner-Seal Siding.

In 1995, owners of structures on which Inner-Seal Siding had been installed brought a class action lawsuit in the District Court for the District of Oregon for damages resulting from the failure of Inner-Seal Siding. The class plaintiffs alleged that while L-P had advertised and marketed Inner-Seal Siding as durable, effective and superior to other types of exterior siding, the siding had prematurely rotted, buckled, cracked and otherwise deteriorated when exposed to normal weather conditions.

The federal action, which covered a nationwide class of claimants, settled shortly after it was filed. On April 26, 1996, the district court approved and adopted a settlement agreement and entered an order and final judgment. Pursuant to the settlement agreement and order, L-P agreed to finance a settlement fund and, in exchange, class claims related to the failure of Inner-Seal Siding were released.[1] L-P ***835**

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[1] The settlement agreement required L-P to make a minimum payment of $275,000,000 into a settlement fund. Qualified claims were paid from that fund and class members were barred from litigating any claim related to the failure of Inner-Seal Siding for a period of four years from the date of the final order and judgment. After the expiration of the fourth year, the settlement agreement gave L-P the option of funding the remaining unpaid claims, if any. If L-P agreed to fund the outstanding claims, all class members remained bound by the agreement for another year. If L-P elected not to fund the outstanding obligations, the settlement terminated with respect to unfunded claims, leaving those class members free to pursue new lawsuits against L-P. This annual reevaluation of remaining claims continued until the end of the seventh year, at which time the claims administrator was ordered to notify L-P if the settlement fund proved insufficient to satisfy all approved claims filed before January 1, 2003. Within 60 days of notification, L-P was directed to advise class

also agreed to reinstate the balance of the term on its 25-year warranty upon termination of the settlement agreement, to be measured from the date of original installation. The settlement was binding on all class members, save those who timely requested exclusion from the class.[2] The settlement

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counsel whether it intended to satisfy the unfunded claims. If L-P agreed to fund the remaining claims, it was required to make additional payments "at the end of each of the next two 12-month periods or until all claims [were] paid in full." Satisfaction of the "final funding" obligation bound all class members "for an additional 24-month period." On the other hand, if L-P determined not to fund the outstanding claims, all class members whose claims remained unsatisfied for a period of 90 days were authorized to "pursue whatever legal remedies [were] available to them without regard to the release."

Because of the large number of claimants, L-P and class counsel, with approval of the special master overseeing the settlement, created several alternative procedures through which class members, at their election, could receive compensation ahead of schedule but at a discounted rate. None of the alternative compensation procedures in any way modified or changed the original settlement agreement.

[2] All members of the "Settlement Class" were "barred and permanently enjoined from prosecuting 'Settled Claims' ... against L-P." The "Settlement Class" was defined as "all Persons who have owned, own, or subsequently acquire Property on which Exterior Inner-Seal Siding has been installed prior to January 1, 1996." The settlement agreement excluded claimants who timely requested exclusion from the class and claimants who were members of a certified class action in Florida titled *Anderson v. Louisiana Pacific Corp.*, No. 94-2458-CA-01. A "Settled Claim" was defined as

> any claim, ... damage, loss or cost, action or cause of action, of every kind and description that the Releasing Party has or may have, whether known or unknown, asserted or unasserted, latent or patent, that is, has been, could reasonably have been or in the future might reasonably be asserted by the Releasing Party either in the Action or in any other action or proceeding in this Court or any other court or forum, regardless of legal theory, and regardless of the type or amount of relief or damages claimed, against any of the Defendants, arising from or in any way relating to any defects or alleged defects of Exterior Inner-Seal Siding, or any part thereof.

did not cover claims arising from the failure of new siding installed after January 1, 1996.

In addition to the release of claims against L-P, the class members released all claims related to the failure of Inner-Seal Siding (installed prior to January 1, 1996) against persons or entities "involved in the distribution, installation, construction and first time sale of structures with Exterior Inner-Seal Siding." This provision was included to foreclose the possibility that class members would bring claims against businesses located in the Inner-Seal Siding chain of distribution. Claims against L-P by persons or entities within the chain of distribution were not released, however.

Under the settlement agreement and order, the district court retained jurisdiction, described as follows:

> [E]xclusive and continuing jurisdiction over the Actions and Parties, including all members of the Class, the administration and enforcement of the settlement, and the benefits to the Class, including for such purposes as supervising and implementation, enforcement, construction, and interpretation of the Settlement Agreement.

By September 2003, L-P had agreed to meet all funding obligations and had made cash payments totaling approximately $509 million to about 142,000 claimants in satisfaction of approximately $823 million in claims.[3]

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[3] This figure includes claims that were satisfied through the alternative funding procedures, *see supra* at 834-35 n. 1, which afforded claimants an opportunity to receive discounted payments on an accelerated basis in order to minimize delay and uncertainty. According to the special master's report dated November 17, 2003, only $18.1 million in valid, approved claims remained unfunded as of the end of the claims period. L-P has also agreed to fund those claims.

***836** *Minnesota Lawsuit*

Lester, a Minnesota corporation, designs, constructs and sells pre-engineered wood buildings for livestock confinement. Lester purchased Inner-Seal Siding from 1991 to 1996 and incorporated the siding into the structural wall panels of buildings sold to its customers. As a distributor of buildings equipped with Inner-Seal Siding, Lester was not a class member and was not a party to the settlement agreement. Class member claims against Lester were released by the settlement, however.

In March 2000, Lester brought an action against L-P in Minnesota state court. Lester sought damages for breach of contract, breach of express and implied warranties, fraud and loss of business reputation as a consequence of having used defective Inner-Seal Siding in its buildings. Lester alleged that it had sold approximately 2,600 buildings with Inner-Seal Siding but that it stopped using the siding in 1996 because of complaints from its dealers and customers. Lester further alleged that it "has received and will continue to receive hundreds of claims and complaints ... which must be administered and resolved in order to avoid further losses."

Lester recognized that new claims by class members were foreclosed by the settlement agreement but observed that the settlement "provide[d] no relief or monetary compensation to [Lester], [its] dealers, or others similarly situated." Because its injuries were not redressed by the settlement agreement, Lester asserted that L-P was

> obligated and required: (i) to pay, reimburse, and indemnify [Lester] for all monies [it] pay[s] and expenses [it] reasonably incur[s] in properly satisfying the claims of [its] dealers and customers arising from defects in and failure of L-P's Inner-Seal; and (ii) to pay, reimburse, and indemnify [Lester] for all other damages and losses [it has] now incurred and

> will incur as a result of [its] purchase and use of L-P's Inner-Seal [Siding].

Lester sought damages "in an amount to be determined at trial" and "an affirmative injunction requiring L-P to resume honoring its warranties and other legal obligations, including, but not limited to reimbursing [Lester] for satisfying the claims of [Lester's] dealers and customers."

L-P disagreed with Lester's interpretation of the res judicata effect of the settlement agreement and moved for partial summary judgment on all present and future claims against L-P related to the failure of Inner-Seal Siding. In particular, L-P argued that Lester's claim for the costs to repair its customers' buildings was barred because a substantial portion of Lester's customers were members of the prior class action and covered by the settlement agreement.

The trial court denied the motion. The court held that under Minnesota law a distributor can recover costs it may incur in the future with respect to a defective product that was placed in the stream of commerce. The court concluded that there were genuine issues of material fact as to whether the settlement agreement precluded recovery of those damages and with respect to the amount of those damages, if any.

The case was tried in September and ***837** October 2002.[4] A significant portion of the trial centered on the issue of damages. Lester argued that moral and business compulsions required it to remove and replace the Inner-Seal Siding on every building that it sold, even if the owner of the building had received at least some compensation in the prior settlement with L-P. Lester's position was explained by its president, who testified that

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[4] The parties filed portions of the trial transcript with the district court. On appeal, Lester offered additional portions of the transcript that were previously unavailable and asked that we take judicial notice of the same. We grant the request. *See* Fed.R.Evid. 201.

> The best thing we could expect to come out of this is that we finally get ... the farmer what he's entitled to, which is he bought a building and expected to have his siding hold up, and that's what we need to make happen and that's why we're here. We're trying to make that result happen.
>
> ...
>
> I want each of you to know that we're going to fix these buildings. That's why we're here. Counsel in some of the lead up to trial has at least left me with some kind of general impression that, you know, is there any guarantee that the customer will be taken care of here? And I would ask you to look at all the different people from Lester and its dealers that you've got a chance to meet over the last two weeks and know that we're here because we want to fix these buildings and that's what we're going to do.

Lester offered evidence that repairing the siding on every affected building would cost $13.2 million. Of that total, approximately $2 million was for buildings that were fabricated after January 1, 1996, and thus not covered by the settlement. The evidence further showed that the total cost of the siding purchased by Lester and used in its buildings was $3.4 million, with approximately $240,000 of that amount falling outside of the terms of the settlement.

At the conclusion of Lester's case, L-P moved for directed verdict. L-P again argued that a portion of Lester's claims were barred by the class action settlement agreement. The trial court denied the motion. The court reasoned that the motion was premature because L-P planned to submit expert testimony concerning the mechanics of the class action and settlement. The court concluded that a final resolution of the effect of the settlement agreement could be made after further factual development.

As the trial court anticipated, the defense focused on the effect of the class action settlement. For instance, L-P called the special master appointed by the district court to oversee the settlement. The special master explained the settlement process, the terms of the settlement and the district court's order and final judgment and decree. L-P also called an expert witness who testified that, based on a comparison of the list of opt-outs and a list of purchasers of Lester's buildings, none of Lester's customers had opted out of the class action settlement. The expert further asserted that as of October 11, 2002, $640,000 had been paid to Lester's customers from the settlement fund.[5]

The trial court, apparently accepting L-P's argument that the class action settlement precluded damages for repair costs ***838** involving buildings that were covered by the settlement agreement, instructed the jury that repair costs were not recoverable unless they fell outside the scope of the settlement:

> You have heard evidence of the settlement of a nationwide class action against Louisiana-Pacific. Lester is not a party to that action and therefore the claims that it makes in this case are not barred by the class action settlement. The Court has determined, however, that one element of Lester's damages, its claims for the cost to repair the buildings with Inner-Seal, is barred as to any particular building, unless one of the following exceptions applies:
>
> (a) the building was constructed on or after January 1, 1996;

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[5] The record does not reflect the actual number of Lester customers who filed claims under the settlement or the amount that each customer received in relation to their submitted claims. Two of Lester's customers testified at trial that recovery under the settlement was about 30% of repair costs.

(b) the building has or may have a siding performance failure after January 1, 2003; or

(c) the building is one for which claims are submitted prior to January 1, 2003, have not been paid and the class action is not funded in August 2003.[6]

Consistent with the court's instruction, the special verdict form directed the jury to specify the damages, if any, awarded for repair costs and the damages it would have awarded if the settlement agreement had not barred certain claims.

Following deliberations, the jury returned a verdict of $29.6 million in favor of Lester.[7] The jury determined that an award of $13.2 million was necessary to compensate Lester for the cost to repair buildings. The jury listed the

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[6] Subsection (b) was likely included to reflect the exception in the settlement agreement for claims for siding failures that occurred after January 1, 2003. Subsection (c) may have followed from Lester's argument that if L-P refused to fund the remaining claims, Lester would be entitled to damages for repair costs. Although L-P subsequently committed to funding the remaining claims, the dates referred to in subsections (b) and (c) were still in the future at the time the instructions were given to the jury. Thus, the jury was, in effect, asked to anticipate the future, which might help to explain the verdict that it reached.

[7] Questions 8 and 9 of the completed verdict form provided:

8. What amount of money would fairly compensate Lester?

Cost of Inner-Seal:	$ 3.4 million
Cost to Repair Buildings (those not barred by the class action):	$13.2 million
Lost Profits:	$10.2 million
Cost to Restore Goodwill:	$ 2.8 million
Total:	$29.6 million

9. Without regard to the class action, what is the total amount of money that would fairly and adequately compensate Lester for the Cost to Repair Buildings (both those in and out of the class action)? $13.2 million

same figure, $13.2 million, as the amount it would have awarded but for the class settlement. In other words, the jury determined as a factual matter that none of the repair costs were covered by the settlement. The jury also awarded Lester $3.4 million for the cost of Inner-Seal Siding, $10.2 million for lost profits and $2.8 million to restore goodwill.

On October 24, 2002, the trial judge signed and filed the Findings of Fact, Conclusions of Law, and Order for Judgment based on the jury verdict. In accordance with the Minnesota Rules of Civil Procedure, the judge stayed entry of judgment for 30 days.[8] By order dated November 18, 2002, the stay was extended at L-P's request until post-trial motions were resolved.

***839** *Federal Injunction*

On November 6, 2002, just three weeks after the jury verdict in favor of Lester, L-P filed a motion to enforce the settlement agreement in the Oregon federal district court with continuing jurisdiction over the settlement. L-P asked the district court to enjoin the state court from entering judgment on the portion of the verdict that was inconsistent with the class action settlement, namely, the jury's award of damages for the cost to repair buildings that had Inner-Seal Siding installed prior to January 1, 1996 and the award for the cost of the Inner-Seal Siding that Lester had purchased from L-P.

On December 13, 2002, the district court granted L-P's motion in part and issued an "injunction enjoining the Minnesota state court from entering judgment on the portion of the jury's damages award that is encompassed in and precluded by the class action settlement agreement." *In re Louisiana-Pacific*, 234 F. Supp. 2d at 1172. The court found

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[8] Such a stay allows for the resolution of any post-trial motions without the need to reopen judgment if relief is granted. *See* Minn. R. Civ. P. 58.01 cmt; *id.* 58.02.

that that portion of the award amounted to $11.2 million.[9] *Id.* at 1182.

Based on its review of Minnesota caselaw, the court determined that the state court had erred when it held that Lester could recover the cost to repair defective Inner-Seal Siding on its customers' buildings.[10] *Id.* at 1177, 1180. Because Minnesota state law did not recognize the repair costs claim, the court concluded that "the Minnesota jury verdict wrongly includes damages expressly encompassed in and precluded by the nationwide class action settlement." *Id.* at 1177-78.

Having found that the verdict included damages covered by the settlement, the court reasoned that allowing the judgment to stand in full would not only "circumvent the settlement agreement" but also "seriously impair the integrity of this court's Order[ ] and directly interfere with and seriously impair [the court's] ability to supervise, implement, enforce, construe and interpret the class action settlement agreement over which [the court has] retained exclusive jurisdiction." *Id.* at 1180. Because federal intervention in the state proceeding was "necessary both in aid of [its] continued jurisdiction and to protect and effectuate [its] Order, Final Judgment and Decree," the court held that the

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[9] The court reached this amount by subtracting $2 million-the cost to repair and replace siding on buildings constructed after January 1, 1996-from the $13.2 million awarded as the total repair and replacement damages. *In re Louisiana-Pacific*, 234 F. Supp. 2d at 1174.

[10] This point was made explicit during the hearing on L-P's motion for injunctive relief, where the district court opined that "the judge in Minnesota ... did wrong. The ... hog barn damage[claims] of people within a class should never have been submitted to that jury. That was wrong in every respect." In its order granting the injunction, the court confirmed its conclusion that "the Minnesota state court was wrong to submit Lester's damages claim for repair costs covered by the class action settlement to the jury for consideration." *In re Louisiana-Pacific*, 234 F. Supp. 2d at 1180.

injunction was proper under the All Writs Act and not barred by the Anti-Injunction Act. *Id.* at 1178, 1180. The court did not, however, enjoin entry of judgment on the $3.4 million in damages that represented the difference between what Lester had paid for Inner-Seal Siding and the actual value of the siding. *Id.* at 1182.

Lester timely appealed.

State Court Judgment

Before the injunction issued, L-P filed post-trial motions for judgment notwithstanding the verdict and for a new trial in state court. Through the motions, L-P renewed its argument that a portion of the ***840** verdict was barred by the class settlement. The motions were pending when the district court issued the injunction.

Following entry of the injunction, the state trial court took up and denied the motions. The court determined that the award was supported by the evidence presented at trial and should not be disturbed. Shortly thereafter, the court issued a revised Order for Judgment. To comply with the injunction, the court entered judgment awarding Lester $20,074,424.21.[11] The court held that if the injunction was vacated, reversed or lifted on appeal, it would reinstate the jury's original award of $29.6 million, plus costs and interest.

L-P appealed. The Minnesota Court of Appeals affirmed. The court declined to address whether Lester's claim for repair costs was properly submitted to the jury, however, because that presented an issue on appeal to this Court. *Lester Bldg. Sys. v. Louisiana-Pacific Corp.*, 2004 WL 291998, No. A03-48, 2004 Minn. App. Lexis 156 (Feb. 17,

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[11] The court reasoned that absent the injunction Lester was entitled to recover $31,375,862.21. That figure was calculated by adding the original jury verdict of $29.6 million, plus $1,519,811 in pre-verdict interest, $189,255 in post-verdict interest and $66,796.21 in costs and disbursements, and subtracting the portion of the verdict enjoined by the district court, $11.2 million, and $101,438 in interest on that amount.

2004). The court explained that L-P could renew its challenge to the award of repair cost damages if the injunction was lifted. L-P's petition for review by the Minnesota Supreme Court was denied. *Lester Bldg. Sys. v. Louisiana Pacific Corp.*, No. A03-48, 2004 Minn. Lexis 248 (Apr. 28, 2004).

II. Standard of Review

We review the exercise of jurisdiction de novo. *Gerritsen v. Consulado Gen. De Mexico*, 989 F.2d 340, 344 (9th Cir. 1993). We review the decision to grant a permanent injunction for abuse of discretion. *United States v. Yacoubian*, 24 F.3d 1, 3 (9th Cir. 1994). A legal error amounts to an abuse of discretion. *Western Sys., Inc. v. Ulloa*, 958 F.2d 864, 867 (9th Cir. 1992). Accordingly, "[t]he question whether the district court had the power to issue the injunction is ... reviewed de novo, while its decision to exercise that power is reviewed for an abuse of discretion." *Id.* Factual findings underlying an injunction are reviewed for clear error. *Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 653 (9th Cir. 2002).

III. Subject Matter Jurisdiction

We first address Lester's jurisdictional argument.[12]

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[12] In addition to its argument that the district court lacked subject matter jurisdiction, Lester contends that it was not subject to the district court's equitable powers because it was not properly served and lacked the requisite minimum contacts with the forum state. The improper service portion of Lester's argument is easily resolved. Lester had actual knowledge of the proceedings through a mailed copy of L-P's motion to enforce the class settlement. That gave Lester an opportunity to appear and oppose the motion. Lester accepted the opportunity, appeared before the district court and contested the legality of the injunction. Nothing more was required to protect Lester and its interests. *See, e.g., In re Baldwin-United Corp.*, 770 F.2d 328, 340 (2d Cir. 1985). We do not separately discuss the issue of minimum contacts, however. Although personal jurisdiction is ordinarily determined at the outset as a threshold

***841** Federal courts are courts of limited jurisdiction and possess "only that power authorized by the Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of America,* 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994). Even where subject matter jurisdiction is satisfied in the original action, enforcement of a final settlement agreement and order "requires its own basis for jurisdiction" before the federal court may "interpret and apply its own judgment to the future conduct contemplated by the judgment." *Flanagan v. Arnaiz,* 143 F.3d 540, 544-45 (9th Cir. 1998). The requisite independent basis for jurisdiction may be supplied by a provision in the settlement agreement and order that expressly retains jurisdiction in the district court for the purpose of overseeing and enforcing the prior judgment. *Id.* at 544. Such a provision, in conjunction with the All Writs Act, empowers a district court to protect its judgment from a subsequent action that frustrates the purpose of the settlement agreement and order. *In re Baldwin-United,* 770 F.2d at 335; *see also Syngenta Crop Prot., Inc. v. Henson,* 537 U.S. 28, 34 n. 1, 123 S. Ct. 366, 154 L. Ed. 2d 368 (2002); *Flanagan,* 143 F.3d at 544.

In this case, the district court had subject matter jurisdiction over the underlying class action.[13] The settlement

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matter, in this case that issue is inexorably intertwined with the merits. If the state court action threatened the jurisdiction of the district court or implicated the res judicata effect of the settlement agreement, Lester would be subject to the jurisdiction of the district court in Oregon, as the court with continuing jurisdiction over the settlement. On the other hand, if the state court lawsuit did not affect the settlement or the district court's jurisdiction over the same, the connection between Lester and the forum state would be more tenuous. Because we conclude that the district court lacked the power to enjoin the state court proceedings, we need not examine whether the district court had the power to enter a binding order against Lester.

[13] We reject Lester's implied collateral attack on subject matter jurisdiction over the class action itself. *See, e.g., Snell v. Cleveland, Inc.,* 316 F.3d 822, 827 (9th Cir. 2002).

agreement and order in turn retained jurisdiction in the district court over the "Actions and Parties, including all members of the Class, the administration and enforcement of the settlement, and the benefits to the Class, including for such purposes as supervising and implementation, enforcement, construction, and interpretation of the Settlement Agreement." This express retention of jurisdiction, coupled with the All Writs Act, gave the district court an adequate jurisdictional basis to entertain L-P's motion to protect the settlement agreement through an injunction.[14] *See In re Baldwin-United,* 770 F.2d at 335; *see also Syngenta,* 537 U.S. at 34 n. 4, 123 S. Ct. 366; *Flanagan,* 143 F.3d at 544.

Lester concedes that the district court retained jurisdiction to protect and enforce the settlement agreement but argues that the court did not have jurisdiction over its state law claims. Lester misconstrues the substantive issue before the district court. L-P did not ask the district court to resolve Lester's state law claims. The sole question before the court on L-P's motion for injunctive relief was whether the state court action interfered with or threatened the prior settlement agreement. The district court was thus called upon to interpret the settlement agreement and to determine whether federal law allowed it to enjoin the state proceedings. By retaining jurisdiction over the enforcement of the settlement agreement, the court preserved the authority to make such a determination and thereby protect its prior judgment ***842** from a subsequent action that threatened the same.

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[14] As the Second Circuit explained in *In re Baldwin-United,* the authority retained by a district court in a settlement agreement and order that provides for continuing and exclusive jurisdiction, in conjunction with the All Writs Act, conveys subject matter jurisdiction to protect a prior judgment from threats by parties and nonparties alike. *See* 770 F.2d at 338.

IV. Anti-Injunction Act

We turn to the propriety of the injunction.[15] The district court drew the authority to issue the injunction from the All Writs Act, which allows federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651. The All Writs Act is limited by the Anti-Injunction Act, which prevents a federal court from enjoining the "proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. The limitations expressed in the Anti-Injunction Act "rest[ ] on the fundamental constitutional independence of the States and their courts," *Atlantic Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs,* 398 U.S. 281, 287, 90 S. Ct. 1739, 26 L. Ed. 2d 234 (1970), and reflect "Congress' considered judgment as to how to balance the tensions inherent in such a system," *Chick Kam Choo v. Exxon Corp.,* 486 U.S. 140, 146, 108 S. Ct. 1684, 100 L. Ed. 2d 127 (1988). Rooted firmly in constitutional principles, the Act is designed to prevent friction between federal and state courts by barring federal intervention in all but the narrowest of circumstances. *See Alton Box Bd. Co. v. Esprit de Corp.,* 682 F.2d 1267, 1271 (9th Cir. 1982); *Bennett v. Medtronic,* 285 F.3d 801, 805 (9th Cir. 2002). Accordingly, the limited exceptions to the Anti-Injunction Act will not "be enlarged by loose statutory construction." *Atlantic Coast Line,* 398 U.S. at 287, 90 S. Ct. 1739. Rather,

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[15] In addition to its arguments under the Anti-Injunction Act, Lester maintains that the injunction violated the Full Faith and Credit Act, its due process rights and the *Rooker-Feldman* doctrine and further contends that L-P was not entitled to an injunction because it had an adequate remedy at law and failed to show irreparable harm. Because we hold that the injunction cannot be sustained under the Anti-Injunction Act, we do not reach Lester's other contentions.

"[a]ny doubts as to the propriety of a federal injunction against state court proceedings [will] be resolved in favor of permitting the state courts to proceed," *id.* at 297, 90 S. Ct. 1739, which means that we will uphold an injunction only on "a strong and unequivocal showing" that such relief is necessary, *Bechtel Petroleum, Inc. v. Webster,* 796 F.2d 252, 253-54 (9th Cir. 1986).

The district court recognized that its equitable powers were circumscribed by the Anti-Injunction Act and held that the injunction was permissible under the second and third exceptions to the Act.[16] With respect to the second exception, the court concluded that the challenged portion of the jury verdict "directly interfere[d] with and seriously impair[ed its] ability to supervise, implement, enforce, construe, and interpret the class action settlement over which [it] retained exclusive jurisdiction." *In re Louisiana-Pacific,* 234 F. Supp. 2d at 1180. With respect to the third exception, the court reviewed Minnesota law and determined that the cases relied on by the trial court did not in fact authorize Lester to recover the cost to repair Inner-Seal Siding. *Id.* Because state law did not allow repair costs as damages, the court reasoned Lester had effectively acted as an agent for class members by "asserting damages claims that belonged to the end users." *Id.* at 1177. Thus, the court concluded that the trial court, by submitting ***843** "Lester's damages claim for repair costs covered by the class action settlement to the jury for consideration," had improperly permitted relitigation of issues resolved by the class settlement and allowed a special "subclass" to recover twice on the same claim. *Id.* at 1180. We address each of those exceptions in turn.[17]

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[16] The first exception to the Anti-Injunction Act, which allows an injunction where "expressly authorized by Act of Congress," is not at issue here.

[17] The dissent suggests that we have "conducted a *de novo* review of the factual findings underlying the district court's decision to issue the

Necessary in Aid of Jurisdiction Exception

The second exception to the Anti-Injunction Act authorizes injunctive relief "to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case."[18] *Atlantic Coast Line*, 398

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injunction under the second exception and substituted[our] judgment for that of the district court." *Post* at 859. The dissent is only partially correct. As our caselaw explains, we must "review the legal determination of whether the district court had the power to issue an injunction de novo." *Continental Airlines, Inc. v. Intra Brokers, Inc.*, 24 F.3d 1099, 1102 (9th Cir. 1994). If we are satisfied that the district court had the authority to issue the injunction, we then examine "its decision to exercise that power ... for an abuse of discretion." *Western Sys.*, 958 F.2d at 867. In this case, we conclude as a matter of law that the district court lacked the power to enjoin the state court proceedings. That is not a matter of discretion.

[18] The dissent views the necessary in aid of jurisdiction exception and the relitigation exception as parallel provisions that authorize an injunction in essentially the same circumstances. *Post* at 866 ("From a pragmatic standpoint, the basic elements of the two exceptions are essentially the same."). We are not inclined to construe the Anti-Injunction Act in that way, as it would render one of the exceptions redundant and the use of the disjunctive "or" in the statute irrelevant, in violation of the familiar canon that cautions against such a reading. *See, e.g., Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 837, 108 S. Ct. 2182, 100 L. Ed. 2d 836 (1988). A distinction between the necessary in aid of jurisdiction exception and the relitigation exception has consistently been recognized in the caselaw. The former exception applies when a parallel state action "threatens to 'render the exercise of the federal court's jurisdiction nugatory.'" *Bennett*, 285 F.3d at 806. The latter exception, which was added in 1948, is used "to prevent state litigation of an issue that previously was presented to and decided by the federal court." *Chick Kam Choo*, 486 U.S. at 147, 108 S. Ct. 1684.

The separate treatment of these provisions in the caselaw forces the dissent to concede that the necessary in aid of jurisdiction exception "is generally applied at an earlier stage of the litigation, before the settlement is fully implemented." *Post* at 866. The dissent suggests that in "many of the cases in which an injunction has been affirmed under the relitigation

U.S. at 295, 90 S. Ct. 1739. This exception "arose from the settled rule that if an action is *in rem,* the court first obtaining jurisdiction over the *res* may proceed without interference from actions in other courts involving the same *res.*" *Alton Box,* 682 F.2d at 1272. Although the second exception has since been expanded to include some *in personam* actions, it remains that an injunction is justified only where a parallel state action ***844** "threatens to 'render the exercise of the federal court's jurisdiction nugatory.'"[19] *Bennett,* 285 F.3d at 806 (quoting *Winkler v. Eli Lilly & Co.,* 101 F.3d 1196, 1202 (7th Cir. 1996)). Indeed, the general rule is still that "[w]here a suit is strictly *in personam* ... there is no objection to a subsequent action in another jurisdiction, either before or after judgment, although the same issues are to be tried and determined[,] ... because [the subsequent action] neither ousts the jurisdiction of the court in which the first suit was brought, nor does it delay or obstruct the exercise of that

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exception, it has also been affirmed under the 'necessary in aid of jurisdiction' exception." *Id.* at 866. But the cases cited by the dissent represent exceptions explained by their particular facts. In *Flanagan v. Arnaiz,* 143 F.3d 540 (9th Cir. 1998), for instance, we applied both exceptions because there was both a final settlement agreement (and judgment) and an ongoing action in the form of litigation over an alleged breach of that settlement agreement. *Id.* at 543-44. The validity of an injunction will more often depend on one exception or the other. *Compare In re Diet Drugs,* 282 F.3d 220, 233 (3d Cir. 2002) (applying the necessary in aid of jurisdiction exception because the federal action had not reached final judgment), *with Amalgamated Sugar Co. v. NL Indus., Inc.,* 825 F.2d 634, 639-640 (2d Cir. 1987) (applying the relitigation exception because the federal action had reached final judgment).

[19] The dissent offers an exactly converse definition of the scope of the necessary in aid of jurisdiction exception. According to the dissent, the " 'necessary in aid of jurisdiction' exception is inapplicable *only* when the district court's jurisdiction has been so completely exhausted that the intrusion by a state court on its exercise of its jurisdiction would be meaningless." *Post* at 867. No authority is cited to support that reading of the caselaw, and we remain bound by precedent.

jurisdiction, nor lead to a conflict of authority where each court acts in accordance with the law."[20] *Kline v. Burke Constr. Co.*, 260 U.S. 226, 232, 43 S. Ct. 79, 67 L. Ed. 226 (1922); *see also Donovan v. City of Dallas*, 377 U.S. 408, 412, 84 S. Ct. 1579, 12 L. Ed. 2d 409 (1964).

The necessary in aid of jurisdiction exception is inapplicable here because the state court action did not threaten the district court's jurisdiction over the Inner-Seal Siding litigation. By the time that the court issued the injunction, the Inner-Seal Siding class action had long since been resolved. Indeed, the district court had several years earlier approved the settlement and entered final judgment. Because the litigation was over, the state court action could not have interfered with the district court's consideration or disposition of the class claims. *Cf. Alton Box*, 682 F.2d at 1271. Nor could it have interfered with the court's continuing jurisdiction over the settlement. The membership of the class was fixed, the parties' respective rights and liabilities were resolved, the settlement fund had been established and claims were being paid. Lester did not seek to join or undo the class, contest the payment of funds to class members or make a claim on the settlement fund. Although the state court litigation arose from the same facts as the class action,

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[20] According to the dissent, we are mired in the law as it was in 1922 and refuse to accept that the necessary in aid of jurisdiction exception has been used in *in personam* actions. *Post* at 869. The dissent is mistaken. We acknowledge that the necessary in aid of jurisdiction exception has been applied in *in personam* actions, though as a limited exception to the rule. *Supra* at 843. We also acknowledge that some courts have rationalized the expansion of the necessary in aid of jurisdiction exception by comparing the jurisdiction of a multidistrict court in a complex class action to a *res*. *See, e.g., In re Baldwin-United*, 770 F.2d at 337. We offer no comment on the validity of such a comparison. We simply hold that however one views the class action proceedings in this case, application of the necessary in aid of jurisdiction exception is not supported by established law.

an "injunction cannot issue to restrain a state court action" simply because it involves "the same subject matter at issue before the federal court." *Id.* at 1272; *accord Bennett,* 285 F.3d at 807. Instead, an injunction is "necessary in aid of" the court's jurisdiction only when it is required to preserve the court's jurisdiction. *See Atlantic Coast Line,* 398 U.S. at 295, 90 S. Ct. 1739; *Bennett,* 285 F.3d at 806-07. Because the state court action did not seriously impair the district court's flexibility and authority to decide the Inner-Seal Siding litigation or enforce the settlement agreement, an injunction was not necessary to preserve the court's jurisdiction. *See, e.g., Alton Box,* 682 F.2d at 1271-73.

***845** The authority cited by the district court, *Hanlon v. Chrysler Corp.,* 150 F.3d 1011 (9th Cir. 1998), is not to the contrary.[21] In *Hanlon,* we upheld an injunction barring a federal class member from pursuing a state class action involving claims that were similar to those raised in a nationwide class action that was nearing resolution. 150 F.3d at 1025. The controversy in that case arose when various lawsuits were consolidated into one nationwide class

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[21] The district court also quoted extensively from the Second Circuit's decision in *In re "Agent Orange" Product Liability Litigation,* 996 F.2d 1425 (2d Cir. 1993). In that case, the court held that "[a] district court, in exceptional circumstances may use its All Writs authority to remove an otherwise unremovable state court case in order to 'effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained.'" 996 F.2d at 1431 (quoting *United States v. New York Tel. Co.,* 434 U.S. 159, 172, 98 S. Ct. 364, 54 L. Ed. 2d 376 (1977)). As noted by the district court in its order, the Supreme Court in *Syngenta Crop Protection, Inc. v. Henson,* 537 U.S. 28, 123 S. Ct. 366, 154 L. Ed. 2d 368 (2002) held that the removal statute "requires that a federal court have original jurisdiction over an action in order for it to be removed from a state court. The All Writs Act, alone or in combination with the existence of ancillary jurisdiction in a federal court, is not a substitute for that requirement." 537 U.S. at 34, 123 S. Ct. 366. Accordingly, the *In re "Agent Orange"* rule, which was never adopted by this Circuit, is no longer instructive.

action. *Id.* at 1018. Shortly thereafter, a preliminary settlement agreement was approved and notice was made to class members. *Id.* To protect the settlement process, the district court ordered that "[p]ending final determination ... of the settlement[,] ... no member of the Settlement Class ... shall commence [a lawsuit involving] ... any of the claims described in the ... Settlement Agreement." *Id.* In contravention of that order, a disaffected class member filed a state class action, through which he sought to represent himself and all similarly situated residents of the state. *Id.* at 1018-19. The district court enjoined the state proceedings. *Id.* at 1019.

We affirmed. We concluded that a temporary stay pending settlement of the nationwide class action was appropriate under the All Writs Act and the Anti-Injunction Act because concurrent state proceedings at such a sensitive stage in the federal proceedings would have threatened the jurisdiction of the district court. *Id.* at 1025. Although *Hanlon* did not elaborate, the decision clearly recognized that a competing state class action covering a portion of the federal class posed a significant danger to the delicate and transitory process of approving a settlement agreement, and thereby threatened the district court's ability to resolve the litigation.[22]

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[22] In this way, *Hanlon* tracks the Third Circuit's decision in *In re Diet Drugs*, in which the court affirmed an order enjoining a parallel state action. Our dissenting colleague relies on *In re Diet Drugs* for the proposition that the complexities of a nationwide class action justify application of the necessary in aid of jurisdiction exception. *Post* at 869. The dissent overlooks one critical aspect of *In re Diet Drugs*, however. In that case, as in *Hanlon*, the federal nationwide class action was nearing settlement at the time the state action was filed. 282 F.3d at 237. In light of the sensitive stage of the federal litigation, the Third Circuit reasoned that the state court action "might interfere with the District Court's oversight of the settlement at that time, given the careful balancing it embodied" and, therefore, posed "a serious threat to the District Court's ability to manage the final stages of this complex litigation." 282 F.3d at 236-37. Here, the prior (not parallel) federal class action resulted in a

We are not presented with similar concerns. Lester was not a class member and ***846** did not seek to represent class members. Nor was the federal litigation at a sensitive stage in the process. The membership of the Inner-Seal Siding class and the terms of the settlement were approved and finalized long before the district court issued the injunction. Final judgment had been entered. There was nothing more for the district court to do in the class action, save to ensure that the terms of the settlement agreement were followed.[23]

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settlement and final judgment nearly four years before Lester filed the state action and over six years before the jury returned its verdict.

[23] The dissent contends that the federal class action remained active and that to reach a contrary result we have improperly "disagree[d] with the district court's statement of the relevant facts" and made "erroneous findings of fact" on appeal. *Post* at 867. Two of the three "facts" that we assertedly ignore, however-that allowing Lester to collect on its repair cost claim will lead to double recovery for some class members and cause other distributors to seek damages "on behalf of customers," *post* at 866 are not factual findings. The first is a legal conclusion and the second is speculation, which the district court failed to connect to the evidence before it or to the fact of how that would threaten its jurisdiction. We do not owe deference to such matters.

Furthermore, the dissent is mistaken about the relevance of L-P's decision to fund claims and the possible effect of the state court action on that decision. By the time the district court enjoined the state proceedings, L-P had already agreed to fund the remaining claims through the seventh year. The sole question was whether L-P would make the "final funding" obligation, which would last until all outstanding claims were paid. *See In re Inner Seal Siding Litigation*, 234 F. Supp. 2d at 1172-73. L-P, after the state jury verdict, answered that question and elected to fund all remaining claims. Accordingly, the jury verdict only had the potential to influence L-P's final funding decision and, ultimately, did not even affect that issue. Moreover, even if L-P's decision to fund the remaining claims had been influenced by the state court action, the requisite threat to the jurisdiction of the district court would still have been lacking. If L-P elected to fund the remaining claims (as it did), the claims administrator would continue paying approved claims. On the other hand, if L-P elected not to fund the additional claims, members whose claims remained unsatisfied would be able to "pursue [any

The state court action could not threaten the court's jurisdiction over that process. Accordingly, the injunction cannot be sustained under the necessary in aid of jurisdiction exception.

The dissent maintains that our holding "disregards the provision of the settlement agreement and the district court order expressly retaining 'exclusive and continuing' jurisdiction over the enforcement of the settlement agreement." *Post* at 868. Relying on our decision in *Flanagan v. Arnaiz,* the dissent suggests that "inclusion of such a provision ... provides a sufficient basis for the invocation of the 'necessary in aid of jurisdiction' exception." *Id.* We are not persuaded that *Flanagan* stands for such a broad proposition. We agree with the dissent that the "exclusive and continuing" jurisdiction provision is important in the sense that without it (and the authority conveyed by the All Writs Act), the district court would have lacked subject matter jurisdiction over L-P's motion to enforce the settlement agreement. *See supra* at 840-41. But that provision, standing alone, does not allow the district court to enjoin any proceeding it wants to enjoin. The power to halt a state proceeding is circumscribed by the Anti-Injunction Act. The necessary in aid of jurisdiction exception to that Act authorizes injunctive relief only when the "federal court's flexibility and authority to decide [a] case" is "seriously impaired" by ***847** a parallel state court proceeding. *Atlantic Coast Line,* 398 U.S. at 295, 90 S. Ct. 1739.

This limitation is actually illustrated by *Flanagan,* in which we upheld an order permanently barring the plaintiffs from pursuing a state court action for breach of a prior settlement agreement. The issue in *Flanagan* arose when the

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available] legal remedies." *Id.* This process of evaluation and reelection to continue funding was agreed to long before Lester brought the state court action. The parties knew that at some point L-P might decide not to fund the remaining claims. The coming to pass of a result that the parties themselves contemplated and provided for in their agreement cannot legitimately be called a threat to the district court's jurisdiction.

plaintiffs settled a federal lawsuit against the defendants. 143 F.3d at 542. The settlement agreement effectively provided that the district court would retain exclusive jurisdiction for the purpose of resolving future disputes between the parties. *Id.* at 543. Less than a year after executing the settlement agreement, however, the plaintiffs filed a state court action against the same defendants for breach of the settlement agreement. *Id.* The state court stayed the proceedings, and the plaintiffs litigated their claims in the district court and on appeal to this Court. *Id.* The plaintiffs lost on all but one count. *Id.* That claim was set for trial. *Id.* With discovery underway in the federal proceeding and a trial date set, the plaintiffs asked the state court to lift the stay. *Id.* Understandably exasperated, the district court enjoined the plaintiffs from pursuing the stayed action or any other state court action alleging a breach of the settlement agreement. *Id.* at 543-44.

We affirmed. We observed that the plaintiffs had engaged in "an entirely unjustified attempt ... to evade their own agreement, incorporated in a court order and judgment, to submit disputes and enforcement proceedings regarding their settlement to the federal district court." *Id.* at 546. Because the plaintiffs had agreed to maintain exclusive jurisdiction in federal court and their concurrent state court action threatened the district court's jurisdiction over an ongoing case in which they were also parties, we held that the Anti-Injunction Act did not bar the stay. *Id.*

Unlike the vexatious litigants in *Flanagan*, Lester did not agree to retain exclusive jurisdiction in the district court. More importantly, the federal lawsuit was not winding its way to trial when the injunction was issued. Rather, the class action had achieved final judgment status more than six years before the jury returned a verdict in the Minnesota state case. The absence of an actual threat to an ongoing case renders the analogy to *Flanagan* unsound.

Relitigation Exception

The third exception to the Anti-Injunction Act, the so-called relitigation exception, permits a federal court to enjoin state proceedings when necessary "to protect or effectuate its judgments." 28 U.S.C. § 2283. This power "allows federal courts to ... protect the res judicata effect of their judgments and prevent the harassment of ... federal litigants through repetitious state litigation." *Amwest Mortgage Corp. v. Grady*, 925 F.2d 1162, 1164 (9th Cir. 1991) (citation and internal quotation marks omitted). Because the relitigation exception is "founded in the well-recognized concepts of res judicata and collateral estoppel," *Chick Kam Choo*, 486 U.S. at 147-48, 108 S. Ct. 1684, the "requirements of identity of the parties, ... adequate notice, and adequate representation apply," *Frank v. United Airlines, Inc.*, 216 F.3d 845, 853 (9th Cir. 2000). In addition, an "essential prerequisite ... is that the claims or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the federal court." *Chick Kam Choo*, 486 U.S. at 147-48, 108 S. Ct. 1684. This "prerequisite is strict and narrow." *Id.* at 148, 108 S. Ct. 1684. Accordingly, a subsequent action may be barred only when "it arises from the same 'transaction, or series of transactions' as the original action [and w]hether two events ***848** are part of the same transaction or series depends on whether they are related to the same set of facts and whether they could conveniently be tried together." *Western Sys.*, 958 F.2d at 871 (quoting Restatement (Second) of Judgments § 24(1), (2)). Rigorous application of res judicata principles ensures that the party sought to be precluded by the prior resolution of a claim or issue enjoyed a " 'full and fair opportunity' to litigate ... in the earlier case." *Amwest Mortgage*, 925 F.2d at 1164-65 (quoting *Allen v. McCurry*, 449 U.S. 90, 95, 101 S. Ct. 411, 66 L. Ed. 2d 308 (1980)).

The relitigation exception is inapplicable here because the Minnesota lawsuit did not challenge the res judicata effect of

the class settlement. Significantly, Lester was not named as a party to the class action and was not a member of the nationwide class.[24] *Cf. Drelles v. Metro. Life Ins. Co.*, 357 F.3d 344, 346-47 (3d Cir. 2003); *Frank*, 216 F.3d at 852-853. Nor were Lester's interests sufficiently parallel to the class members' interests such that privity could be implied.[25]

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[24] The dissent attaches no legal significance to the fact that Lester was not a party to the class action. *Post* at 859-60 & 863. The relevance of that fact is difficult to avoid. The relitigation exception is "founded in the well-recognized concepts of res judicata and collateral estoppel." *Chick Kam Choo*, 486 U.S. at 147-48, 108 S. Ct. 1684. Central to the concepts of res judicata and collateral estoppel is the principle that only parties to a prior action and parties in privity with parties to a prior action are barred from relitigating claims or issues in a subsequent action. *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1081 (9th Cir. 2003); *Frank*, 216 F.3d at 853. Thus, the fact that Lester was not a party to the prior action leaves only the possibility of privity with class members as a basis for applying the relitigation exception. *See, e.g., Amal-gamated Sugar*, 825 F.2d at 640.

[25] Relying on our decision in *Trevino v. Gates*, 99 F.3d 911 (9th Cir. 1996), the dissent contends that Lester and its class-member customers were in "virtual" privity because Lester, "[i]n essence, ... sought to serve as a conduit for its customers by obtaining additional damages on their behalf." *Post* at 864. We disagree. In *Trevino*, we found sufficient privity of interest between a child and her grandmother with respect to the narrow issue of the amount of punitive damages to be awarded for the wrongful death of the child's father because the issues and the interests of the parties in the separate actions were "identical" and the child and her grandmother enjoyed "a familial relationship," which was "an important factor" in finding privity. 99 F.3d at 933-34. *Trevino* is readily distinguishable. For starters, there was no familial or legal relationship, express or implied, between Lester and its class member customers, and Lester did not control the class members in the prior action or succeed to the class members' interests. Moreover, Lester's interests and the interests of its class-member customers were similar only in the limited sense that both Lester and its customers wanted the buildings constructed with Inner-Seal Siding to be repaired. *Cf. Kerr-McGee Chem.*, 816 F.2d at 1180-81. According to Lester, however, moral obligations and business realities compelled it to repair the damaged buildings with or

Cf. Kerr-McGee Chem. Corp. v. Hartigan, 816 F.2d 1177, 1180-81 (7th Cir. 1987). As a general rule, "one is not bound by a judgment ***849** *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process." *Richards v. Jefferson County*, 517 U.S. 793, 798, 116 S. Ct. 1761, 135 L. Ed. 2d 76 (1996) (quoting *Hansberry v. Lee*, 311 U.S. 32, 40, 61 S. Ct. 115, 85 L. Ed. 22 (1940)). For that reason, "[a] judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to those proceedings."[26] *Id.* (quoting *Martin v. Wilks*,

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without compensation from L-P. Lester was also motivated to repair the defective siding by a desire to rehabilitate its tarnished image and rebuild its goodwill. From Lester's perspective, then, the repair costs claim was far more about making itself whole than reimbursing customers. *Cf. Frank*, 216 F.3d at 852-53; *Kerr-McGee Chem.*, 816 F.2d at 1180-81. Lester's financial and image-related concerns were obviously not represented by the class members in the prior action. *Cf. Frank*, 216 F.3d at 852-53; *Kerr-McGee Chem.*, 816 F.2d at 1180-81. Finally, the issues litigated in the two actions are not "identical." In the federal action, the class members sued and recovered for their injuries, while Lester, in the state court action, sued and recovered for its injuries. The mere fact that both injuries have the same root-defective Inner-Seal Siding-does not mean that both issues are identical.

[26] The dissent relies on the Second Circuit's decision in *In re Baldwin-United* for the proposition that a nonparty can be bound by a prior judgment, even if it was not in privity with a party to the earlier action and did not have an opportunity to litigate its claims or seek redress for its injuries. *Post* at 862 & 863-64. Although we do not read *In re Baldwin-United* as announcing such a sweeping rule, we need not recount that opinion in detail. The short rebuttal is that the Anti-Injunction Act was not at issue in *In re Baldwin-United*. The parties to that action conceded that "the Anti-Injunction Act [was] inapplicable ... since the injunction below was issued before any suits were commenced in state court." 770 F.2d at 335. Although the court looked to caselaw interpreting the Anti-Injunction Act for guidance, it was not constrained by the strict requirements of the relitigation exception. We are not so unconstrained. *See, e.g., Atlantic Coast Line*, 398 U.S. at 287, 90 S. Ct. 1739

490 U.S. 755, 762, 109 S. Ct. 2180, 104 L. Ed. 2d 835 (1989)). As a stranger to the class proceedings and settlement and lacking privity with class members, Lester was entitled to sue L-P in state court for its own injuries. *See id.; Drelles*, 357 F.3d at 346-47; *De Cosme v. Sea Containers, Ltd.*, 874 F.2d 66, 68 (1st Cir. 1989); *Alton Box*, 682 F.2d at 1273.

L-P concedes that Lester was not precluded from litigating all claims related to the failure of Inner-Seal Siding. Nevertheless, L-P contends that the issue of damages for costs related to the repair of Inner-Seal Siding was litigated to finality in the class action and released by the settlement agreement. L-P reaches this conclusion by assuming that Lester, in bringing the repair cost claim, acted as a representative of its class member customers. By litigating injuries to its customers on behalf of its customers, so the argument goes, Lester should be treated like a class member for collateral estoppel purposes and precluded, as they would be, by the prior resolution of their claims.

According to the state trial court, however, the prayer for repair costs presented a cognizable state law claim belonging to Lester. As the distributor of a defective product, the trial court reasoned that Lester was entitled to recover the costs it would incur to make its customers whole. *See, e.g., DeGidio v. Ace Eng'g Co.*, 302 Minn. 19, 225 N.W. 2d 217, 223 (1974). Because the repair cost claim sought recovery of Lester's damages, albeit voluntary and future damages, Lester was not acting as a representative of its customers seeking to recover on behalf of its customers. The claim was instead entirely personal to Lester. That claim could not have been resolved in the class action together with the class claims because Lester was neither a party to the class action nor represented by a party to the class action. *See Western Sys.*,

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(explaining that the exceptions provided in the Anti-Injunction Act should not "be enlarged by loose statutory construction").

958 F.2d at 871-72; *Amwest Mortgage,* 925 F.2d at 1164-65; *De Cosme,* 874 F.2d at 68; *Alton Box,* 682 F.2d at 1273. Because Lester did not have a "full and fair opportunity" to litigate its repair costs claim in the class action, that claim was not adjudicated and released by the class settlement. *See Drelles,* 357 F.3d at 346-47; *De Cosme,* 874 F.2d at 68; *Alton Box,* 682 F.2d at 1273; *cf. Chick Kam Choo,* 486 U.S. at 149, 108 S. Ct. 1684; *Amwest Mortgage,* 925 F.2d at 1164-65. ***850** With an essential element of the relitigation exception lacking, the district court had no authority to enter the injunction. *See Martin v. Wilks,* 490 U.S. 755, 762, 109 S. Ct. 2180, 104 L. Ed. 2d 835 (1989); *Chick Kam Choo,* 486 U.S. at 149, 108 S. Ct. 1684; *Drelles,* 357 F.3d at 346-47; *Amwest Mortgage,* 925 F.2d at 1165; *Cratsenberg v. Owners of NW 20 Real Estate (In re Federal Shopping Way, Inc.),* 717 F.2d 1264, 1270-71 (9th Cir. 1983); *Alton Box,* 682 F.2d at 1273.

The district court's invocation of the relitigation exception was improper for the additional reason that any potential for relitigation of covered claims was addressed by the trial court's instructions to the jury. Specifically, the trial court instructed the jury that Lester could not be awarded damages for injuries that were covered by the settlement. This instruction essentially gave L-P the legal ruling it sought and did not itself conflict with the federal court settlement.[27]

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[27] There may be some tension between the trial court's conclusion that state law allowed Lester to recover for repair costs and the instruction barring the recovery of such damages if the buildings involved were covered by the class settlement. If so, that is a matter for the state courts to resolve. It remains that the trial court instructed the jury that Lester's repair costs claim was barred under the settlement unless the building at issue had been constructed after January 1, 1996, has or may have a siding performance failure after January 1, 2003, or was one for which claims would be submitted prior to January 1, 2003 but not paid by the settlement fund. These limitations were derived from the class action settlement itself.

L-P was no doubt disappointed by the verdict returned. Whether Lester had adequately proven its claims presented a question of fact, however. The trial court left it to the jury, as the finder of fact, to assess damages according to detailed instructions. It is not the province of the district court in Oregon to say that the trial court and jury in Minnesota were wrong in their respective determinations. The proper recourse for L-P was to appeal through the state court system and, if necessary, to petition the United States Supreme Court for review. *See Parsons Steel Inc. v. First Alabama Bank*, 474 U.S. 518, 525-26, 106 S. Ct. 768, 88 L. Ed. 2d 877 (1986); *Atlantic Coast Line*, 398 U.S. at 296, 90 S. Ct. 1739; *cf. Drelles*, 357 F.3d at 346-47. "[L]ower federal courts possess no power whatever to sit in direct review of state court decisions." *Atlantic Coast Line*, 398 U.S. at 296, 90 S. Ct. 1739. Indeed, "the highly intrusive remedy of a federal-court injunction against the enforcement of [a] state-court judgment" is not justified even where a state court mistakenly rejects the res judicata effect of a prior federal judgment. *Parsons*, 474 U.S. at 525, 106 S. Ct. 768. Instead, "[c]hallenges to the correctness of the state court's determination as to the conclusive effect of a federal judgment must be pursued by way of appeal through the state-court system and certiorari from ... [the Supreme] Court."

Similarly, while it may be difficult to reconcile the jury instructions and the verdict that none of the repair costs were barred by the settlement, we are not in a position to second guess the findings of the state court jury. On that subject, the trial court held that "both sides presented evidence as to what they believed [the] damage[s] for Inner-Seal should be. After a three-week trial, the jury returned a finding of damages in the total amount of $29.6 million which is supported by the evidence presented and this Court sees no reason to disturb the finding of the jury." Though that explanation may not seem very persuasive or be very satisfying, we are not in a position to second-guess the Minnesota trial judge on the subject, either. Presumably that issue could be taken up with Minnesota's appellate courts.

Id.; accord Chick Kam Choo, 486 U.S. at 146, 108 S. Ct. 1684.

***851** L-P, of course, did appeal the verdict and certain rulings by the trial court through the state system. Hedging its bets, L-P also sought a federal injunction during the brief interval between the return of the jury verdict and entry of judgment. The district court agreed with L-P that Minnesota law did not permit Lester to recover the costs to repair Inner-Seal Siding and that the trial court had erred in submitting such a claim to the jury. That ruling was tantamount to a judgment reversing a state court on a matter of state law. *Cf. Atlantic Coast Line,* 398 U.S. at 293, 90 S. Ct. 1739. Lower federal courts enjoy no such power. *Parsons,* 474 U.S. at 525-26, 106 S. Ct. 768. It is the sole responsibility of the state courts to determine whether state law allows a particular claim in a given dispute. *See Erie v. Tompkins,* 304 U.S. 64, 78, 58 S. Ct. 817, 82 L. Ed. 1188 (1938). In failing to appreciate the state court's right to decide issues of state law, the district court exacerbated the inherent conflict between federal and state courts.[28] *See Chick Kam Choo,* 486 U.S. at

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[28] According to the dissent, "whether or not Lester had a 'cognizable state law claim' is inconsequential," because "[t]he jury awarded damages for the very same repair costs previously provided for in the settlement agreement and district court order." *Post* at 861. The error in the dissent's premise is similar to the mistake made by the district court when it concluded, contrary to the decision of the state trial court, that Minnesota law did not allow Lester to recover repair costs if its customers were members of the settlement class. *In Re Louisiana-Pacific,* 234 F. Supp. 2d at 1177 ("I have studied [the cases cited by Lester and relied on by the state court] carefully and find them to be readily distinguishable and thus not controlling."); *id.* at 1180 ("[T]he Minnesota state court was wrong to submit Lester's damages claim for repair costs covered by the class action settlement to the jury for consideration."). While the dissent is far more thoughtful in its expression than the district court, the central premise is the same: the state trial court's ruling and state jury's verdict notwithstanding, Lester was not actually litigating claims for its own injuries; it was litigating claims for its customers' injuries. The difficulty

146, 108 S. Ct. 1684. Indeed, allowing L-P to lose on the merits in state court, yet run to federal court for an injunction just days before the state court decision achieved preclusive status, offends the very "principles of equity, comity, and federalism" that undergird the Anti-Injunction Act.[29] *See* ***852** *Parsons,* 474 U.S. at 526, 106 S. Ct. 768; *Ramsden,* 214 F.3d at 870-71.

The case relied by on the district court, *Flanagan v. Arnaiz,* is not to the contrary. As discussed, *Flanagan* involved both a settlement agreement (and final judgment) and ongoing federal litigation for an alleged breach of that agreement. 143 F.3d at 543. As the dispute over the settlement agreement made its way to trial, the plaintiffs in the

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with that premise is that the trial court held that Minnesota law recognized Lester's repair costs claim, and the jury returned a verdict stating that Lester, as a matter of state law, was entitled to the damages awarded. If we are to take seriously the rule that we do not sit in review of state court determinations, *see, e.g., Parsons,* 474 U.S. at 525-26, 106 S. Ct. 768, we must accept that Lester was not acting as a representative of its customers or as a conduit funneling money to its customers. We must accept that Lester was acting as a business, injured by LP and seeking to be made whole through its own claims for its own future damages, and that its damages were proven to the satisfaction of the jury. Perhaps the state trial court and jury were wrong in their respective determinations. A federal court, however, either explicitly as in the district court order or implicitly as in the dissent, is not in a position to say so.

In allowing the state court to resolve issues of state law for itself, we do not, as the dissent implies, disclaim our obligation to evaluate the propriety of the injunction ourselves. If we believed the issue in this case was as straightforward as the dissent suggests, we may well have come to a different conclusion.

[29] Although the trial court's rulings and the verdict had not been reduced to a final judgment, the underlying issues, including the effect of the settlement agreement and the availability of repair costs, had been resolved by the trial court. *Cf. Ramsden v. AgriBank, FCB,* 214 F.3d 865, 869-70 (7th Cir. 2000); *De Cosme,* 874 F.2d at 68-69. At some-point, federal courts must accept that a state court action has progressed too far to warrant intervention, even if a technical prerequisite to final judgment remains. *See Ramsden,* 214 F.3d at 870-71.

federal litigation asked a state court to resolve their breach of settlement agreement claim. *Id.* The district court ended their efforts. *Id.* at 544. We upheld the injunction under the relitigation exception because the first action had been decided in federal court and the parties had expressly agreed to maintain exclusive jurisdiction in federal court. *Id.* 546. The final judgment of a federal court and the accompanying settlement agreement were therefore threatened by a subsequent state court action that was brought by the very parties to the prior judgment. *See id.*

In contrast to the facts of *Flanagan,* Lester was not a party to the settlement agreement and was not bound by the provision placing exclusive authority in the district court. Moreover, the Minnesota action did not arise from the settlement agreement itself. Rather, Lester brought claims for its own injuries in the court of its choice, as it was entitled to do. A federal court does not have the power to prevent a plaintiff from pursuing a state law claim simply because that claim shares a common factual background with a claim litigated in an earlier case. There must be, as there was in *Flanagan,* the requisite nexus between the parties and claims or issues litigated in the first action and the parties and claims or issues sought to be precluded in the second action.[30]

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[30] The cases cited by L-P are easily distinguishable. In the only binding precedent cited, *Class Plaintiffs v. City of Seattle,* 955 F.2d 1268 (9th Cir. 1992), we upheld an anti-suit provision in a class action settlement agreement against attack by a group of settlement beneficiaries that had not individually approved the agreement because we determined that they were in privity with and adequately represented by their trustee, who had been a party to the settlement and was authorized to act for the beneficiaries. 955 F.2d at 1277-79. We reasoned that the Anti-Injunction Act did not bar the anti-suit provision because the district court was empowered to protect the settlement from attack by parties and parties in privity with parties to the settlement agreement. *See id.*

The dissent expresses fear that our holding will "severely limit [ ] the authority of district courts to protect [their] jurisdiction and to preserve [their] settlement agreements ... [and] render[ ] federal court orders and judgments vulnerable to further litigation in state courts." *Post* at 14604. Even if the dissent's concerns were valid, the authority of federal courts is not unlimited. In any event, we do not perceive such broad dangers. We recognize that others in Lester's position, encouraged by the jury verdict, may pursue similar claims if the laws of their respective states so allow and if the ***853** respective statutes of limitations have not expired. But a release of claims by distributors was not a benefit that L-P bargained for in the settlement agreement. We simply hold that a plaintiff, who was not a party or in privity with a party to a prior federal action and who asserts claims that were not resolved in the prior action, is not precluded from litigating its state law claims in state court. This holding is entirely consonant with established law and faithfully allows the settlement agreement to shape the scope of our ruling: parties who agreed to the settlement and released their claims remain bound. On the other hand, claimants like Lester, class plaintiffs who opted out of the settlement or the plaintiffs in the class action in Florida, who were never part of the

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In contrast to *Class Plaintiffs*, the class members in the underlying action were not in privity with Lester and did not adequately represent Lester's interests. Thus, Lester was not bound by the settlement. If Lester was not bound by the settlement, it follows that Lester's state law claims were not foreclosed by the settlement, even if those claims rested on some of the same facts involved in the class action.

The nonjurisdictional cases cited by L-P are of comparably little support. *See In re Prudential Ins. Co.*, 261 F.3d 355, 366-68 (3d Cir. 2001) (holding that a class settlement could bar future claims by class members, even though those claims were not raised by the class members in the original action); *In re Baldwin-United*, 770 F.2d at 335 (observing that "the parties agree that the Anti-Injunction Act is inapplicable here since the injunction below was issued before any suits were commenced in state court").

underlying action, may litigate their claims in accordance with the laws of their respective states.[31]

V. Conclusion

For the foregoing reasons, the order enjoining the Minnesota court from entering judgment on the $11.2 million in damages awarded to Lester for repair costs violates the Anti-Injunction Act. The injunction is vacated.

REVERSED.

SILVERMAN, Circuit Judge, concurring:

I agree that the Anti-Injunction Act prohibits the injunction that the district court entered in this case. I write separately because I do not believe that we should address the merits of L-P's res judicata defense. Having elected to assert that defense in the state trial court, L-P cannot come running to federal court to enjoin the state proceedings the moment it gets a verdict that is not to its liking. If L-P is unhappy with the result of its state court trial, it must take that up with the Minnesota appellate courts. It cannot have it both ways—litigate in state court and hope for a win, but obtain a federal

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[31] We should not lose perspective. The contested portion of the award is limited to the narrow issue of recovery for repair and replacement costs. L-P concedes, at least on appeal, that Lester had the right to bring its other claims. Nor should we assume that the Minnesota appellate courts will fail to correct errors, if any, that occurred in the trial court. "[A] federal court does not have inherent power to ignore the limitations of [the Anti-Injunction Act] and to enjoin state court proceedings merely because those proceedings interfere with a protected federal right or invade an area preempted by federal law, even when the interference is unmistakably clear." *Atlantic Coast Line*, 398 U.S. at 294, 90 S. Ct. 1739. Accordingly, the "state proceedings 'should normally be allowed to continued unimpaired by intervention of the lower federal courts, with relief from error, if any through the state appellate courts and ultimately, [the Supreme] Court.'" *Choo*, 486 U.S. at 146, 108 S. Ct. 1684 (quoting *Atlantic Coast Line*, 398 U.S. at 287, 90 S. Ct. 1739). That avenue remains open to L-P.

injunction of the state proceedings when it loses. To put it another way, what happens in state court stays in state court.

When Lester sued L-P in Minnesota state court, L-P immediately could have moved for an injunction in the district court. Instead, it asserted res judicata in the state court, arguing that the settlement agreement between L-P and a nationwide class of building owners precluded some or all of Lester's claims. That turned out to be a good decision, at least up until the time that the jury rendered its verdict. Until then, L-P had succeeded in persuading the trial court to issue jury instructions that barred Lester from recovering damages for work it performed for class members who had already received settlement proceeds, even though the trial court had previously ruled that Minnesota law permitted Lester to assert ***854** claims against L-P independent of the building owners' claims. So far, so good.

Then, things went sour for L-P. The jury awarded $13.2 million for costs to repair buildings that were not covered by the federal class action, and also decided that same amount would compensate Lester for its costs to repair all buildings, including those covered by the class action. In other words, the jury concluded that every repair for which Lester sought damages was performed on a building not covered by the settlement agreement, despite expert testimony that none of Lester's customers had opted out of the class a that $640,000 had been paid to them from the settlement fund. Unhappy with what it perceived as a double recovery for some class members, L-P ran to district court and sought to enjoin the state court proceedings. At that point, however, it was too late. In my view, once L-P raised its res judicata defense in state court and that court ruled on it, the interests of comity outweighed the district court's perceived need to prevent possible relitigation of its judgment.

In *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518, 524-25, 106 S. Ct. 768, 88 L. Ed. 2d 877 (1986), the Supreme Court held that once a state court rules on the

preclusive effect of a prior federal court judgment, a federal court considering enjoining the state court proceedings must first "look to that state's law of judgments to determine whether another court of that state would view the res judicata ruling as final and binding." The Court rejected the idea that, notwithstanding the Full Faith and Credit Act, the Anti-Injunction Act "empowers a federal court to be the final adjudicator as to the res judicata effects of its prior judgments on a subsequent state action." *Id.* at 522, 106 S. Ct. 768 (internal quotation marks omitted). Because of the "important values of federalism and comity embodied in the Full Faith and Credit Act," the Court limited the relitigation exception to the Anti-Injunction Act to those situations in which the state court *has not yet ruled* on the merits of the res judicata issue. *Id.* at 524, 106 S. Ct. 768 ("Once the state court has finally rejected a claim of res judicata, then the Full Faith and Credit Act becomes applicable. ...").

Ramsden v. AgriBank, 214 F.3d 865 (7th Cir. 2000), dealt with a similar issue: the propriety of enjoining state court proceedings where the state court rules that a prior federal judgment does not bar the claim at issue, but state law would *not* give preclusive effect to that ruling. The Ramsdens sued Agribank and Hass, an employee of Agribank, alleging tortious conduct in the sale of farm property. While the Ramsdens appealed the state court's dismissal of Hass, they filed a second state court action against Agribank alone, which was removed to federal district court. The district court dismissed the action on the merits. On remand in state court, Hass unsuccessfully moved for summary judgment based on the preclusive effect of the federal court ruling. Agribank (whose counsel also represented Hass) then returned to federal court and obtained an injunction that barred the state court from further considering any issues between the parties relating to the purchase.

The Seventh Circuit vacated the injunction. Initially, it noted that, although Wisconsin courts would not consider the

state court's denial of summary judgment as sufficiently final to warrant preclusion, that did not mean the district court was right to invoke the relitigation exception. *Id.* at 869 ("[J]ust because a federal court has the statutory power to enjoin a state court proceeding does not mean that it should exercise that authority."). Instead, ***855** in light of the comity concerns in *Parsons Steel,* the Seventh Circuit held that:

> Once a state court considers a res judicata defense and rules that a prior federal judgment does not actually bar a claim, the affront of federal court intervention stripping the state court of power to continue is greatly magnified. After such a ruling, the interests in preventing possible relitigation are therefore generally outweighed by the heightened comity concerns except in the most extraordinary circumstances.

Id. at 870-71. Restricting the district court's discretion in that manner was necessary to "prevent the relitigation exception from simply being turned into a vehicle for seeking appellate review of a state court decision in federal court." *Id.* at 872.

I agree with the reasoning of the Seventh Circuit and would adopt its holding here. In state court, L-P asserted res judicata in its motions for summary judgment, directed verdict and judgment notwithstanding the verdict, and during its case in chief, presented extensive testimony about the settlement agreement and its effect on Lester's claims. L-P cannot legitimately contend that it did not have a full and fair opportunity to litigate the res judicata issue. Also, there is no question that the trial court squarely addressed the issue multiple times. That should end a federal court's inquiry.[1]

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[1] Referring to the fact that L-P moved for an injunction just before final judgment was entered in state court, Judge Clifton cites to *Ramsden* and states that "[a]t some point, federal courts must accept that a state court action has progressed too far to warrant intervention, even if a

Following *Ramsden,* we do not have to decide whether L-P's res judicata defense has any merit, in particular the complicated issues of privity and virtual privity. The matter is now in the hands of the Minnesota appellate courts.

It would be tempting to conclude that the jury's apparent confusion over the district court's instructions not to award damages for buildings covered by the settlement agreement was an unforeseeable occurrence, entitling L-P to a mulligan in federal court. As Judge Clifton points out, however, L-P will have the opportunity in the Minnesota appellate courts to seek correction of any errors in the verdict. *See Ramsden,* 214 F.3d at 872 (noting that defendants "would still have an opportunity to appeal the state trial court's decision up through the state appeals process"). Having chosen the forum in which to assert res judicata, L-P cannot now abandon the state review process and seek federal court intrusion, even if the jury (or the trial court) got it wrong. *See Parsons Steel,* 474 U.S. at 525, 106 S. Ct. 768 ("Even if the state court mistakenly rejected respondents' claim of res judicata, this does not justify the highly intrusive remedy of a federal-court injunction against the enforcement of the state-court judgment."). Indeed, in affirming a district court's denial of a request to enjoin state court proceedings, we have recognized that "state courts are just as capable as federal courts in applying applicable law." *Merle Norman Cosmetics, Inc. v. Victa,* 936 F.2d 466, 468 (9th Cir. 1991) ("nothing prevented Merle Norman from raising its defenses of res judicata and collateral estoppel in the California courts").

I agree with Judge Clifton that the district court abused its discretion in issuing ***856** the injunction under the "necessary in aid of jurisdiction" exception to the Anti-Injunction Act. It

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technical prerequisite to final judgment remains." I believe a state court action reaches that point of no return when the state court rules on the res judicata issue, as the Minnesota trial court did here, regardless of whether a final judgment has been entered.

is worth noting that, aside from its concerns that the trial court's instructions confused the jury and led to a subclass of class members who "enjoy special treatment not available to other class members"—an issue which, as I explain above, now belongs in the Minnesota appellate courts—the only reason that the district court offered for the injunction was that there was a "substantial risk that others in Lester's position, encouraged by the jury verdict, will pursue similar claims." While we typically defer to a district court's determination that it must act to protect its jurisdiction in a pending class action, *see Blalock Eddy Ranch v. MCI Telecomm. Corp.*, 982 F.2d 371, 375 (9th Cir. 1992), I fail to see how the district court's speculation about future lawsuits complies with the Anti-Injunction Act. *See Bechtel Petroleum, Inc. v. Webster,* 796 F.2d 252, 253-54 (9th Cir. 1986) (requiring "a strong and unequivocal showing" that a federal injunction is necessary).

In fact, the threat of other lawsuits is not extraordinary at all. In any class action culminating in a global settlement agreement, there is always the chance that absent class members will break from the ranks and file separate actions elsewhere, driving up the defendant's litigation expenses. Of course, res judicata will always be an available defense to such actions, perhaps even warranting a prompt dismissal. As previously noted, when such actions arise a party must decide whether to assert res judicata in the state court or return to federal court and seek an injunction. All we need to hold here is that once the party chooses to litigate its res judicata defense in a state forum and that court rules on the issue, the Anti-Injunction Act prevents its relitigation in federal court.

REINHARDT, Circuit Judge, dissenting:

At a time when Congress is expanding the jurisdiction of the federal courts over national class-action lawsuits, *see* 28 U.S.C. § 1332(d), the majority's decision severely limits the authority of district courts to protect that jurisdiction and to preserve the settlement agreements they have authorized. It renders federal court orders and judgments vulnerable to further litigation in state courts on a state-by-state basis, litigation that can reopen what are intended to be final damage awards and undermine the orderly implementation of complex national settlement agreements. Further, it allows parties and third parties alike to circumvent federal class-action orders by relying on state law claims that contravene the specific provisions of such orders.

The specific question is whether a federal court may enjoin entry of a final judgment by a state court when the state court jury awards damages that are barred by a federal court settlement agreement and the district court order and judgment adopting it. There is no dispute that if one of Lester's customers had sued Louisiana-Pacific in a Minnesota state court seeking the recovery of funds to make repairs covered by the settlement agreement, an injunction would have been appropriate. The only difference between that case and the one before us is that Lester's customers did not sue Louisiana-Pacific directly. Instead, the action was filed by Lester which sought to recover funds from Louisiana-Pacific on its customers' behalf and for their benefit. Lester assured the jury that the funds would be used to make repairs to the customers' buildings, the very same repairs for which funds are provided to those same customers under the settlement agreement. The majority views the difference in plaintiffs ***857** as dispositive. I view it as immaterial. In effect, the majority condones a double recovery by a sub-group of class members in direct contravention of the settlement agreement and encourages the proliferation of similar sub-groups and similar lawsuits in other states. In light of these circum-

stances, it is difficult to comprehend why the majority concludes that the district court erred when it enjoined the Minnesota state court from entering judgment on the portion of the state jury's verdict that provided for the double recovery.

I.

In 1996, the district court approved a nationwide class settlement of a number of consolidated lawsuits alleging damages resulting from serious defects in Inner-Seal Siding, a product of the Louisiana-Pacific Corporation. In the settlement agreement and the order approving it, the district court retained "exclusive and continuing" jurisdiction over any claim which in any way relates to any defect or alleged defect of Inner-Seal Siding that could reasonably be asserted by a class member and brought against Louisiana-Pacific in any court or forum, regardless of legal theory. The national class was composed of all individuals who owned or acquired a building that had Inner-Seal Siding installed prior to January 1, 1996. In return for Louisiana-Pacific's agreement to pay a then-undetermined amount of damages (which according to a special master's report dated November 17, 2003 involves claims in excess of $820 million), class members released it from all claims associated with their use of Inner-Seal Siding. They also fully released any entities within the chain of distribution for Inner-Seal Siding. Among the distributors enjoying this collateral benefit of the settlement is the appellant, Lester, a manufacturer of hog barns. The agreement was formally approved by court order.

Despite the release it was granted by its customers in the settlement agreement, Lester sued Louisiana-Pacific in a Minnesota state court. Among the damages it sought, and the jury awarded, was the cost of repairs to its customers' buildings necessitated by the use of Inner-Seal Siding during the period covered by the settlement agreement. Lester's evidence at the state court trial was that the full cost of

repairs to all of its customers' hog barns was $13.2 million, approximately $2 million of which was for barns built after January 1, 1996, and therefore not covered by the settlement agreement and order. The trial judge instructed the jury that although Lester was not a party to the settlement agreement, recovery on any claims for the cost of repairs to the buildings built prior to January 1, 1996 (during the period covered by the agreement) was barred, with two exceptions that are not relevant here. The jury nevertheless returned a verdict awarding Lester the full $13.2 million for the "Cost to Repair Buildings (those *not* barred by the class action)" (emphasis added). However, when asked on the special verdict form "[w]ithout regard to the class action, what is the total money that would fairly and adequately compensate Lester for the Cost to Repair Buildings (both those *in and out* of the class action)?" (emphasis added), the jury responded with the same figure—$13.2 million. In view of the evidence introduced by the plaintiffs, it is clear that, although the jury offered conflicting and inconsistent answers to the questions it was asked, the $13.2 million portion of the verdict it returned included both the $11.2 million in damages barred by the settlement agreement and the approximately $2 million for the period not covered by the agreement. In short, the jury awarded Lester compensation for the cost of repairs to *all* its customers' hog ***858** barns and not merely for the cost of those that were *not covered* by the terms of the settlement agreement.[1]

Because Lester's customers would receive a double recovery, the district court permanently enjoined entry of judgment in the state court on $11.2 million of the jury's verdict, *i.e.*,

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[1] Lester obtained a total verdict of $29.6 million against Louisiana-Pacific covering all of its claims. Louisiana-Pacific does not challenge the propriety of the portion of damages that redresses direct losses that Lester itself suffered. It challenges only the award of repair costs of class members covered by the settlement agreement.

that portion of the verdict awarding Lester damages for the cost of repairs to its customers' hog barns during the period covered by the settlement agreement and court order. The majority now holds that the jury's verdict does not constitute a threat to the district court's "exclusive and continuing" jurisdiction, that the district court may not set aside the verdict in aid of its jurisdiction over the implementation of the settlement, that the injunction is not necessary to protect the settlement and the court order, that the injunction is not authorized under the relitigation exception to the Anti-Injunction Act, and that Lester's interests in the state court action are not parallel to or in privity with those of its customers who are class members. I strongly disagree in all respects.

II.

Under the All Writs Act, a district court may "issue all writs necessary or appropriate in aid of [its] respective jurisdiction[ ] and agreeable to the usages and principles of law." 28 U.S.C. § 1651. The district court's power to issue an injunction against proceedings in a state court is limited by the Anti-Injunction Act which prohibits a federal court from enjoining state court proceedings "except as expressly authorized by ... Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. The interplay of the two Acts is well established in the federal courts. As we have explained, under the Acts an injunction is appropriate when (1) Congress has expressly authorized it; (2) it is necessary in aid of the federal court's jurisdiction; or (3) it is necessary to protect or effectuate the federal court's judgments. *See Bennett v. Medtronic, Inc.*, 285 F.3d 801, 805 (9th Cir. 2002). When any of these exceptions to the Anti-Injunction Act is present, the district court *may* issue an injunction, but it is not required to do so. *See Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 151, 108 S. Ct. 1684, 100 L. Ed. 2d 127 (1988). The decision to issue

the injunction is committed to the sound discretion of the district court, *Blalock Eddy Ranch v. MCI Telecom. Corp.*, 982 F.2d 371, 375 (9th Cir. 1992), and its exercise is reviewed for an abuse of that discretion. *See Western Sys., Inc. v..Ulloa,* 958 F.2d 864, 867-68 (9th Cir. 1992). The majority acknowledges that it is required to apply an abuse of discretion standard in reviewing a district court's exercise of its discretion to grant an injunction. Under that standard, a reviewing court cannot reverse the trial court unless it has a definite and firm conviction that the lower court committed a clear error of judgment in the conclusion that it reached upon a weighing of the relevant factors, *see United States v. Finley,* 301 F.3d 1000, 1007 (9th Cir. 2002), or that the lower court's conclusion was based on an error of law. *See Western Sys., Inc. v. Ulloa,* 958 F.2d 864, 867-68 (9th Cir. 1992). The majority also acknowledges, as it must, that factual findings underlying the district court's decision to grant the injunction are reviewed for clear error. *See* ***859** *Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 653 (9th Cir. 2002).

Despite these acknowledgments, the majority impermissibly conducts a *de novo* review of the district court's ruling that the injunction was appropriate under *both* the second and third exceptions to the Anti-Injunction Act. The majority may be correct that the district court's ruling with respect to the third exception turned purely on a question of law—whether Lester was in privity with its class-member customers—and thus was subject to *de novo* review. However, the majority's complaint regarding the district court's reliance on the second exception is based entirely on the majority's factual analysis of the effect of the Minnesota verdict upon the court's continuing jurisdiction over the federal action. This is essentially a factual dispute involving the exercise of judgment by the district judge. There is simply no allegation by the majority that the district court erred in its legal conclusions, that it exercised its discretion to an end not justified by

the evidence, or that its judgment was clearly against the logic and effect of the facts as they were found. *See Rabkin v. Or. Health Sciences Univ.*, 350 F.3d 967, 977 (9th Cir. 2003). Instead of applying a deferential standard, the majority conducted a *de novo* review of the factual findings underlying the district court's decision to issue the injunction under the second exception and substituted its judgment for that of the district court. This, it may not do. *Scott*, 306 F.3d at 653. Regardless, however, of the standard applied, the majority plainly erred in reversing the district court's decision to issue an injunction on the bases of both the second and third exceptions to the Anti-Injunction Act.

III.

I will discuss the second and third exceptions to the Anti-Injunction Act in reverse order, starting with the rule that injunctions may be issued when "necessary to protect or effectuate federal court judgments." That exception is also known as the relitigation exception. It "was designed to permit a federal court to prevent state court litigation of an issue that was previously presented to and decided by a federal court." *G.C. & K.B. Invs., Inc. v. Wilson*, 326 F.3d 1096, 1107 (9th Cir. 2003) (citation omitted). The district court issued the injunction under the relitigation exception on the ground that "by permitting Lester to pursue to verdict claims for damages plainly covered by the class action settlement, the Minnesota court allowed relitigation of issues already presented to and decided by this court many years ago." *In re Louisiana-Pacific Inner-Seal Siding Litig.*, 234 F. Supp. 2d 1170, 1180 (D. Or. 2002). The majority disagrees primarily for the reason that "Lester was not named as a party to the class action and was not a member of the nationwide class. Nor were Lester's interests sufficiently parallel to the class members' interests such that privity could be implied." Maj. op. at 848 (citations and footnotes omitted). The first reason is irrelevant and the latter is contrary

both to the facts in the record and to indisputable principles of law.

There is no question that the Minnesota state court verdict involved the relitigation of issues that had been resolved by the settlement agreement. The settlement agreement covers

> any claim, [liability, right, demand, suit, matter, obligation,] *damage, loss or cost,* action or cause of action, of every kind and description that the Releasing Party [as defined] has or may have, whether known or unknown, asserted or unasserted, latent or patent, that is, has been, could reasonably have been or in the future might reasonably be asserted ***860** by the Releasing Party either in the Action or in any other action or proceeding in this Court or any other court or forum, regardless of legal theory, and regardless of the type or amount of relief or damages claimed, against any of the Defendants, *arising from or in any way relating to any defects or alleged defects of [Inner-Seal Siding],* or any part thereof.

In re Louisiana-Pacific, 234 F. Supp. 2d at 1172 (quoting the settlement agreement) (emphasis added). The scope of the agreement is broad and comprehensive. It resolves *any* claim, damage, loss, or cost which in *any* way relates to *any* defect or alleged defect of Inner-Seal Siding that might reasonably be asserted by *any* class member and brought against Louisiana-Pacific in *any* court or forum, regardless of legal theory. The effect of the settlement agreement is to bar any future claim for the same damage, loss, or cost, including principally the cost of repairs arising from any defect in Inner-Seal Siding.

In March, 2000, Lester filed an action in Minnesota state court seeking to recover damages for numerous injuries, specifically including the cost to its customers of repairing their buildings covered by the settlement agreement. When

the case went to trial, Lester offered evidence that the removal and replacement of Inner-Seal Siding on all of its customers' hog barns would cost $13.2 million, with approximately $2 million of that amount being allocated to barns built after January 1, 1996, and therefore *not covered* by the settlement agreement. Despite the trial judge's instruction to award damages only for the cost of repairing barns *not covered* by the settlement agreement, the jury returned a verdict covering the costs of repairing *all* the barns, both those covered by the settlement agreement and those outside its scope. Thus, instead of awarding Lester only the $2 million it sought for barns constructed post-January 1, 1996, it also awarded an additional $11.2 million for the cost of repairs to the settlement agreement barns. As a result, the jury's verdict conflicts directly with the settlement agreement and federal court order, and it may properly be enjoined. We have stated the rule plainly: "A district court may properly issue an injunction under the relitigation exception if 'there could be an actual conflict between the subsequent state court judgment and the prior federal judgment.'" *G.C. & K.B. Invs.*, 326 F.3d at 1107 (quotations omitted).

The majority asserts that the issue of the jury's disregard of the trial judge's instruction is a matter for the state courts to resolve.[2] Although the question of the effect on the state court proceedings of the jury's disregard of the instruction may be a matter for the state courts, the question whether the verdict the jury returned is consistent with the settlement agreement and the federal court order is a federal question. *See In re Agent Orange*, 996 F.2d 1425, 1431 (2d Cir. 1993)

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[2] Had the jury followed the trial judge's instructions, it would have returned a verdict of only $2 million for repair costs instead of $13.2 million. Although the jury clearly violated the trial judge's directives, the judge declined to disturb the verdict, thus upholding the double recovery award. *See* Maj. op. at 850 n.27.

("The court best situated to make this determination [as to the scope of the settlement agreement] is the court that approved the settlement and entered the judgment enforcing it."). For purposes of the relitigation exception, there is no difference between a verdict that results from the jury's disregard of the court's instruction and one in which the instruction was not given at all. In either case, entry of final judgment on the verdict as returned by the Minnesota ***861** jury would have the impermissible effect of allowing the circumvention of the settlement agreement and the receipt of duplicate damages and costs that are directly covered by it. *See In re Louisiana-Pacific*, 234 F. Supp. 2d at 1180. In both cases, the intrusion into the district court's domain by the state court is the same; the potential judgment constitutes a serious threat to the court's ability to protect its settlement agreement and, accordingly, the district court is authorized to prevent its entry.

The majority concludes that even if the jury's disregard for the settlement agreement is not a question for the state courts alone, the Minnesota verdict does not conflict with the settlement agreement because "the prayer for repair costs presented a cognizable state law claim belonging to Lester." Maj. op. at 849. Lester argues, and the majority agrees, that notwithstanding the settlement agreement and notwithstanding the trial court's instruction, the $11.2 million award for repair costs that Lester received was an award to which Lester was entitled under Minnesota law. Once again, the fundamental problem with this argument is that whether or not Lester had a "cognizable state law claim" is inconsequential to the question we must decide—whether the jury's award is inconsistent with the settlement agreement. There can be no doubt that it is. The jury awarded damages for the very same repair costs previously provided for in the settlement agreement and district court order. In doing so, it stripped Louisiana-Pacific of the protection against further liability that lies at the heart of the settlement agreement.

The jury's verdict is in direct conflict with that agreement and with the federal court order.

The settlement agreement completely resolved the issue of liability for any damage, loss, or cost incurred by Lester's customers as a result of their use of Inner-Seal Siding. Even if the majority were correct that Lester's "cognizable state law claim" was not itself litigated in the class action, the fact that the *issue* on which that claim relies has been fully litigated in federal court is sufficient justification for the district court's injunction. *See Chick Kam Choo,* 486 U.S. at 147, 108 S. Ct. 1684 (stating that the relitigation exception is "designed to permit a federal court to prevent state litigation of an issue that previously was presented to and decided by the federal court"). If enterprising litigants like Lester were allowed to relitigate claims covered by the settlement agreement merely by alleging them as a matter of a particular state's law, "the finality of virtually any class action ... could be defeated by subsequent suit brought by [parties] asserting rights derivative of those released by the class members." *In re Baldwin-United Corp.,* 770 F.2d 328, 336 (2d Cir. 1985).

Here, of course, not only was the issue of the compensation for the cost of repairs due to the owners of barns built with Inner-Seal Siding fully litigated and resolved by the settlement agreement, but the state court jury awarded Lester substantial damages for the purpose of making the same repairs already paid for by Louisiana-Pacific under the damage award in that agreement. In the absence of the injunction, this double recovery would have occurred notwithstanding the district court's 1996 order and judgment, under which the class settlement damages were intended to be the only damages Louisiana-Pacific would be required to pay on account of the harm to the barns involved. The Second Circuit has held, in an important and highly persuasive opinion, that the issuance of an injunction is appropriate in such circumstances. In *In re Baldwin-United Corp.,* thirty-one states that were ***862** not parties to a federal court

settlement against a group of securities broker-dealers were enjoined from bringing state court actions against the dealers where the damages sought by the states were intended to be paid over to persons who were parties to the settlement agreement. *See In re Baldwin-United Corp.*, 770 F.2d at 337. The Second Circuit upheld the injunction, stating, "[i]f the states or others could derivatively assert the same claims on behalf of the same class members or members of it, there could be no certainty about the finality of any federal settlement.... The effect would be to threaten to reopen the settlement...." *Id.* In short, the Second Circuit warned, the same claims could be relitigated in every state and the district court judgment would be indeterminate.

As in *In re Baldwin-United Corp.*, the finality of the district court's order and judgment are in jeopardy in the case before us. The settlement agreement would be meaningless if distributors or others in the chain of distribution, like Lester, could circumvent the federal judgment by filing suit in their own name, and then recover damages *for the benefit* of their class member-customers. Had the verdict been entered as returned, Louisiana-Pacific would have been required to pay Lester $11.2 million to make repairs for its customers who had already been compensated for the damage they suffered and, thus, contrary to the settlement agreement, would, unlike all other class members, receive double compensation for the damage to their barns. I can conceive of no reason why entry of a verdict cannot be enjoined when a state court jury awards money to compensate a party for loss or damage for which that party has already been compensated under a settlement agreement in federal court—an agreement expressly designed to provide the exclusive remedy for those damages. In fact, "[e]ven if no actual conflict is possible, an injunction could still be proper if res

judicata would bar the state court proceedings." *G.C. & K.B. Invs.*, 326 F.3d at 1107 (quotations omitted).[3]

Lester clearly sought a double recovery for its customers. As a result of the settlement agreement, Lester had no liability to its vendees and no risk associated with potential lawsuits by them. Thus, the ***863** award for "Cost to Repair Buildings" covered by the settlement agreement could not result from any damage Lester suffered. Accordingly, the only recovery Lester could have sought was *on behalf of* its customers. We need not speculate on this point, however. At trial in the Minnesota state court, Lester's president testified. He told the jury that the company sought damages to "fix these buildings" and to get each customer "what he's

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[3] Judge Silverman's concurrence asserts that "once [Louisiana-Pacific] raised its res judicata defense in state court and that court ruled on it," the district court should have deferred to the state court's ruling and thus declined to consider the relitigation exception. It is unclear to which state court ruling Judge Silverman is referring, and his implication that the state court ruled against Louisiana-Pacific on the res judicata issue prior to the district court's issuance of its injunction is wrong. In fact, the converse is true: the state court instructed the jury that the settlement agreement barred recovery for repair costs incurred during the settlement period. (Indeed, even the majority opinion acknowledges that the trial court ruled in Louisiana-Pacific's favor on the res judicata issue. *See* Maj. op. at 837.) The jury then returned the disputed verdict. Before the state court issued any ruling with respect to the validity of the jury's action, the federal court issued the injunction. Thus, the principal cases upon which Judge Silverman relies in his concurrence, *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518, 106 S. Ct. 768, 88 L. Ed. 2d 877 (1986), and *Ramsden v. AgriBank, FCB*, 214 F.3d 865 (7th Cir. 2000), in both of which the state courts had expressly rejected a res judicata defense *before* the injunction issued are completely inapposite. Moreover, in *Parsons* the state court had entered its *judgment* prior to the federal court injunction, a fact that was central to the Supreme Court's ruling: "We hold, therefore, that the Court of Appeals erred by refusing to consider the preclusive effect ... of the state-court judgment." 474 U.S. at 525, 106 S. Ct. 768. Here, the Minnesota court had not ruled on the legality of the jury's verdict, let alone entered judgment, prior to the issuance of the injunction.

entitled to." Lester's "Cost to Repair Buildings" damage award was undeniably made for the purpose of satisfying the same claims resolved by the class settlement. This is why the Minnesota court gave the instruction that the jury disregarded: any claim for damages covered by the settlement agreement was barred. The $11.2 million enjoined by the district court was awarded *solely* for the damage to Lester's customers' property, not Lester's. There can be no dispute that the $11.2 million enjoined by the district court is an award *for the benefit* of the class member-customers, and not for the benefit of Lester.

The majority attempts to avoid the problem posed by double recovery on the basis that Lester was not a party to the class action. It asserts that compensating Lester so that it may pay the costs of repairing its customers' hog barns is somehow different from compensating Lester's customers directly. However, because Lester seeks recovery for the same damage, loss, or cost that has already been paid to its customers under the settlement agreement, and because Lester is simply serving as a conduit for the obtaining of additional compensation for those same customers for that same harm, it is irrelevant that Lester was not itself a party to the settlement agreement. The terms of the settlement agreement clearly provide that the fund it establishes shall be the exclusive source of relief for class members and shall fully resolve any damage, loss, or cost to those class members. Whether the jury's award is given to Lester's customers or to Lester for the benefit of its customers, Louisiana-Pacific would be required under the prospective state court judgment to pay double compensation in order to remedy the harm for which it had already paid the agreed-upon compensation. Regardless of Lester's lack of participation in the federal case, the jury's award is inconsistent with the settlement agreement.

That a non-party may be precluded from relitigating in state court an issue already decided in federal court is well

established in federal law. In *In re Baldwin-United Corp.*, the thirty-one States Attorneys General who brought the action sought "to enforce state laws authorizing them in their representative capacities to seek restitution and monetary recovery from the defendants to be paid over to those of the states' citizens who are plaintiffs in the consolidated class actions...." 770 F.2d at 332-33. The states were, like Lester, beneficent strangers to the class settlement and possessed a cognizable state law claim. They argued, like Lester, that they were not barred by the settlement agreement from obtaining a recovery in their own right, albeit for the benefit of class members. They acknowledged that their intent was "to pursue remedies in the state[s'] name[s]" by "tak[ing] back the restitution that consumers deserve." *Id.* at 332 n. 1. For this reason, they claimed that any damages received by the states would not constitute a "double recovery," even though the class members would be the ultimate beneficiaries. *Id.* The Second Circuit upheld the district court's injunction on the ground that

> no defendant in the consolidated federal actions ... could reasonably be expected to consummate a settlement of those claims if their claims could be reasserted ***864** under state laws, whether by states on behalf of the plaintiffs *or by anyone else, seeking recovery of money to be paid to the [class] plaintiffs.* Whether a state represented itself to be acting as a 'sovereign' in such a suit or described its prayer as one for 'restitution' or a 'penalty' would make no difference if the recovery sought by the state was to be paid over to the [class] plaintiffs.

Id. at 336-37 (emphasis added). The court's holding was not dependent upon any finding that the states were in privity with class members. Nor did the court find it relevant that the states were authorized to file their action under applicable state laws or that they asserted a "cognizable state law

claim." Whether Lester was a party to the settlement agreement or was in privity with any such party is beside the point. The jury's verdict can be enjoined simply because it awards additional damages to be used for the benefit of class members in satisfaction of claims for which they have already been compensated under the settlement agreement. The fact that a third party brings the action in its own name is without consequence. *In re Baldwin-United Corp.* is the leading case in the area; it is correct, and there is no reason to create a direct conflict with it.

The majority contends, nevertheless, that privity is necessary for a non-party to be bound by the settlement agreement. *See* Maj. op. at 848 n.24. Even if it is, the district court's order would stand. Privity "is a legal conclusion designating a person so identified in interest with a party to former litigation that he represents precisely the same right in respect to the subject matter involved." *United States v. Schimmels (In re Schimmels)*, 127 F.3d 875, 881 (9th Cir. 1997) (quotation marks and citation omitted). Although privity was originally reserved for specific relationships such as indemnitors and indemnitees, we have noted that "[r]ecent cases apply the privity concept in a much more flexible manner ... and courts have found the existence of privity in an array of disparate circumstances summarized under the heading of 'virtual representation.'" *See Kourtis v. Cameron*, 419 F.3d 989, 996 (9th Cir. 2005). An example of one such relationship is where a party to a pending action has "sufficiently similar interests" to a non-party that litigated the same issue in a prior action. *See Trevino v. Gates*, 99 F.3d 911, 924 (9th Cir. 1996) (holding that a child who filed an action seeking punitive damages as the result of the killing of her father was in privity with her grandmother who earlier sued concerning the same events, because the grandmother had a "tremendous incentive" to recover punitive damages); *United States v. ITT Rayonier, Inc.*, 627 F.2d 996, 1003 (9th Cir. 1980) ("Courts have recognized that a non-party may be

bound if a party is so closely aligned with its interests as to be its 'virtual representative.'" (citation omitted)).

The majority simply asserts that Lester's interests were not "parallel" to those of the class members and, thus, they were not in privity. It provides no explanation as to why Lester's claim for an award of "Cost to Repair Buildings" owned by class members and covered by the settlement agreement is not parallel to those of the class members themselves. Lester simply sought to obtain a further recovery for the same injury suffered by the class members, with the intention of passing the recovery along to those members. In essence, Lester sought to serve as a conduit for its customers by obtaining additional damages on their behalf. The privity here is far stronger than in *Trevino* where the grandmother and granddaughter each sought separate recoveries for their own ***865** benefit.[4] Certainly, the class members here had a "tremendous incentive" to recover the damages that Lester later sought on their behalf. *See Trevino,* 99 F.3d at 924. Certainly, Lester and its customers had "sufficiently similar interests." *See id.* Accordingly, I conclude that Lester has no greater, or different, interest in the "Cost to Repair Buildings" covered by the settlement than did its customers, and that *Trevino,* which binds us, compels the affirmance of the district court's injunction.

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[4] The majority's assertion that *Trevino* is "readily distinguishable" because here there is no familial relationship between the parties in privity misses the point. In *Trevino,* the critical issue was not the familial relationship but rather that "the interests of Trevino and her grandmother are so similar that Trevino's grandmother virtually represented Trevino in [the prior litigation]." 99 F.3d at 924. The facts here are fundamentally indistinguishable; Lester's own president testified during the state court trial that the focus of that litigation was to get each customer "what he's entitled to." However, as in *Trevino,* his customers' interests had been fully represented in the prior federal action and were protected by the settlement agreement.

Although Lester may not have had a full opportunity to litigate its customers' claims in the federal court, its customers themselves adequately represented any interest that Lester might have had in seeing that its customers' hog barns were repaired. *See ITT Rayonier*, 627 F.2d at 1003. As such, Lester's interests and those of its customers are absolutely parallel and Lester's interests were fully represented and vigorously pursued by the customers during the settlement proceedings. *See Schimmels*, 127 F.3d at 881; *Trevino*, 99 F.3d at 924. Accordingly, Lester is in privity with its customers and is barred from receiving the portion of the jury's verdict that would compensate its customers twice for the cost of the same repairs. *See In re Baldwin-United Corp.*, 770 F.2d at 336; *TBK Partners, Ltd. v. Western Union Corp.*, 675 F.2d 456, 460-62 (2d Cir. 1982) (holding that claims based on the "identical factual predicate" as those covered by the settlement agreement were barred by a prior judgment on the settlement). The district court did not err when it issued the injunction pursuant to the relitigation exception.

IV.

The district court also based its injunction on the second exception to the Anti-Injunction Act, injunctions that are "necessary in aid of [ ] jurisdiction." 28 U.S.C. § 2283. Regarding that exception, the district court held that:

> [I]n the exercise of my discretion [I] conclude that the requested injunction is proper and should issue. ... [Allowing Lester's case in Minnesota to proceed would] circumvent the settlement agreement and the elaborate negotiated claims resolution procedures contained therein, and create, as [Louisiana-Pacific] suggests, a "subclass" of class members whose claims would, if the jury verdict is permitted to stand, enjoy special treatment not available to other class members. Moreover, there is a substan-

> tial risk that others in Lester's position, encouraged by the jury verdict, will pursue similar claims, thus further impairing the class action settlement and interfering in this court's stewardship over it.

In re Louisiana-Pacific, 234 F. Supp. 2d at 1180. As the district court's ruling demonstrates, the "necessary in aid of jurisdiction" exception is quite similar to the relitigation exception, and in some respects, overlapping. From a pragmatic standpoint, the basic elements of the two exceptions are essentially the same. The principal***866** difference is that the former exception is generally applied at an earlier stage of the litigation, before the settlement is fully implemented. Nevertheless, in many cases in which an injunction has been affirmed under the relitigation exception, it has also been affirmed under the "necessary in aid of jurisdiction" exception. *See, e.g., Flanagan v. Arnaiz*, 143 F.3d 540, 545-46 (9th Cir. 1998); *Battle v. Liberty Nat'l Life Ins. Co.*, 877 F.2d 877, 881-83 (11th Cir. 1989) (holding that both exceptions applied where a judgment pursuant to a settlement agreement in federal court was entered five years prior to the enjoined state court action, and the federal court had retained jurisdiction for the purpose of construing and implementing terms of the settlement); *United States v. Am. Soc'y of Composers, Authors & Publishers*, 442 F.2d 601, 603 (2nd Cir. 1971). Thus, to the extent that I have already responded to the majority's arguments in discussing the relitigation exception, I will not reiterate that analysis here. Nor will I reiterate any of the affirmative arguments I have already advanced as to why the issuance of the injunction was necessary. I will note only that for the reasons offered earlier, it is clear to me not only that the district court did not err when it issued its injunction in reliance on the relitigation exception, but also that it did not abuse its discretion when it relied on the "necessary in aid of jurisdiction" exception as well.

In reaching its decision regarding the "necessary in aid of jurisdiction" exception, the district court explained that serious issues pertaining to the implementation of the federal class settlement remained unresolved. First, the district court found that insofar as Lester claimed damages for the cost of repairing its customers' hog barns, those customers covered by the settlement agreement would effectively become a subclass that would enjoy special treatment unavailable to other class members, specifically the double recovery of their damages. Second, the district court expressed concern that if the jury's verdict were allowed to stand, a flock of enterprising Lester-like plaintiffs might appear in state courts around the country, seeking remuneration for claims *on behalf of* customers covered by the settlement agreement. The possibility of these occurrences threatened the settlement agreement because, among other reasons, there would be a risk that the agreement would no longer provide the *exclusive* relief for customers that the parties intended.[5] Third, the district judge found that the state court verdict, if not enjoined, would "seriously impair the integrity of this court's Order, and directly interfere with and seriously impair my ability to supervise, implement, enforce, construe and interpret the class action settlement agreement over which I have retained exclusive jurisdiction." These concerns are not trivial and taken together, there can be no question that they

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[5] The settlement agreement provides that "the [district] Court shall retain *exclusive and continuing* jurisdiction of the Action, all Parties and Settlement Class members, to interpret and enforce the terms, conditions, and obligations of this release." *In re Louisiana-Pacific*, 234 F. Supp. 2d at 1173 (quoting the settlement agreement) (emphasis added). Similarly, the district court order approving the agreement states that the district court retains *"exclusive and continuing* jurisdiction over the Actions and Parties, including all members of the Class, the administration and enforcement of the settlement, and the benefits to the Class, including for such purposes as supervising and implementation, enforcement, construction, and interpretation of the Settlement Agreement." (emphasis added).

created a substantial and serious risk that the district court's jurisdiction over the class would become "nugatory." *See Bennett*, 285 F.3d at 806.

***867** The district court's third factual finding, that the state court verdict would substantially impair its ability to supervise the settlement agreement, was made at a time when Louisiana Pacific was still very much in the process of satisfying the terms of that agreement. The majority, in its effort to make it appear as though the federal litigation was over and done with and that the district court had little if any supervision left to perform, makes much of the fact that, as of September, 2003, Louisiana-Pacific had paid approximately $509 million in satisfaction of $823 million in claims and that less than $20 million remained in valid and approved unfunded claims. However, those were not the facts before the district court when it issued its injunction in December, 2002. At that time, the final day for class members to file claims against Louisiana-Pacific had not yet arrived and the company had not yet decided whether to satisfy in full all of the remaining valid and approved unfunded claims. In fact, one mechanism for funding outstanding claims, the Claimant Offer Program, was not approved until March 24, 2003, three months after the injunction was issued. Thereafter, on June 27, 2003, the court approved a stipulation between class members and Louisiana-Pacific regarding the implementation of that program. Thus, the majority mischaracterizes the facts regarding the status of the federal litigation, which the appointed special master described as "one of the largest and most complex class action settlements ever reached in the United States." The settlement was still at a sensitive stage and the district court acted within its discretion when it concluded that the state court action threatened its stability.

The majority disagrees with the district court's statement of the relevant facts and its analysis of them. It premises its decision on the misguided assumption that the district court's

work was done (in which case the relitigation exception would still apply). The majority writes:

> [t]he necessary in aid of jurisdiction exception is inapplicable here because the state court action did not threaten the district court's jurisdiction over the Inner-Seal Siding litigation. By the time that the court issued the injunction, the Inner-Seal Siding class action had long since been resolved. Indeed, the district court had several years earlier approved the settlement and entered final judgment. Because the litigation was over, the state court action could not have interfered with the district court's consideration or disposition of the class claims. Nor could it have interfered with the court's continuing jurisdiction over the settlement. The membership of the class was fixed, the parties' respective rights and liabilities were resolved, the settlement fund had been established and claims were being paid.

Maj. op. at 844 (internal citation omitted). In other words, the majority finds, erroneously, that the district court had, from a practical standpoint, exhausted its jurisdiction. It asserts that the class action "had long since been resolved," and that there was, therefore, no threat to the court's jurisdiction. It concludes, therefore, that the court was without the authority to issue an injunction under the "necessary in aid of jurisdiction" exception.

The first problem with the majority's holding is that it is based on erroneous findings of fact improperly made by an appellate court. My colleagues mischaracterize the status of the class action and ignore the district court's factual findings regarding the threat that the jury verdict posed to the ongoing implementation of the complex settlement agreement. The majority holds that the "necessary in aid of jurisdiction" exception is inapplicable ***868** because "the Inner-Seal Siding class action had long since been resolved[,] ... [t]he

membership of the class was fixed, the parties' respective rights and liabilities were resolved, the settlement fund had been established and claims were being paid." Maj. op. at 844 (citation omitted). That is, of course, a different view of the status of the case than the district court expressed when it determined that the jury verdict interfered with the ongoing administration of the settlement fund. It is also a different view than is revealed by an examination of the factual record. The "necessary in aid of jurisdiction" exception is inapplicable only when the district court's jurisdiction has been so completely exhausted that the intrusion by a state court on its exercise of its jurisdiction would be meaningless. The exception is not, as the majority suggests, inapplicable simply because the district court has entered a settlement agreement that is in the process of being implemented under the active supervision of the court.

Here, although the "membership of the Inner-Seal Siding class and the terms of the settlement were approved and finalized long before the district court issued the injunction," Maj. op. at 846, all class members' claims had not been paid (nor had they all even been made) as of the date the injunction was issued, and the administration of the settlement was ongoing. Much remained to be done to carry out the settlement both by the parties and the court. The district court's injunction was designed to ensure that the remaining class claims would be funded and paid, and that Louisiana-Pacific would not be required to compensate class members for the same damage, loss, or cost in another forum at any time in the future. Without the injunction, the court's enforcement jurisdiction and the final settlement of all claims were, in the district court's judgment, seriously threatened. Accordingly, the court had the discretion to issue the injunction under the "necessary in aid of jurisdiction" exception.

Second, the majority disregards the provision of the settlement agreement and the district court order expressly retaining "exclusive and continuing" jurisdiction over the

enforcement of the settlement agreement, "including [ ] such purposes as supervising and implementation, ... construction, and interpretation of the Settlement Agreement." In *Flanagan,* 143 F.3d at 540, we held that the inclusion of such a provision, establishing "exclusive" enforcement jurisdiction in the district court provides a sufficient basis for the invocation of the "necessary in aid of jurisdiction" exception. *See id.* at 546; *see also Battle,* 877 F.2d at 880-83; *Am. Soc'y of Composers,* 442 F.2d at 603. The reason is that the court's jurisdiction over the settlement agreement finds its source in the express provision of the settlement agreement and court order retaining exclusive and continuing jurisdiction; it is "more than just a continuation or renewal of jurisdiction." *See Flanagan,* 143 F.3d at 544 (quotations omitted). In this case, the district court included in its order exactly the kind of express provision described in *Flanagan.* Accordingly, the district court's reliance upon *Flanagan* was not improper, and its invocation of the "necessary in aid of jurisdiction" exception was appropriate.[6]

***869** The third reason that the district court's decision should be affirmed pursuant to the "necessary in aid of jurisdiction" exception is that the mere complexity of the settlement justifies the court's issuance of the injunction under that exception. *In re Diet Drugs,* 282 F.3d 220, 236 (3d Cir. 2002). The settlement agreement in the case before us, which is well in excess of a half-billion dollars, brought to a conclusion litigation that combined three nationwide

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[6] In its analysis of the necessary in aid of jurisdiction exception, the majority seeks unsuccessfully to distinguish *Flanagan* on the ground that, in that case, disputes arising from the settlement agreement were still being litigated in federal court when the plaintiffs sought to pursue their state court claims. The majority's argument ignores the fact that in our analysis of the Anti-Injunction Act's exceptions in *Flanagan* we considered only the fact that the settlement agreement had conferred continuing jurisdiction; we did not once mention the import of ongoing disputes in federal court. *See* 143 F.3d at 545-46.

class actions plus a number of similar statewide actions. The settlement agreement's comprehensiveness is especially important because the district court and the parties invested enormous resources in its approval and enforcement. Because the settlement agreement is complex, it is especially vulnerable to state actions that may frustrate the district court's attempt to oversee its administration. *See id.*, 282 F.3d at 235-37 and 235 n. 12 ("It is in the nature of complex litigation that the parties often seek complicated, comprehensive settlements to resolve as many claims as possible in one proceeding. These cases are especially vulnerable to parallel state actions....").

The majority disregards the complexity of this case. It asserts only that, historically-speaking, the "necessary in aid of jurisdiction" exception arose from the rule that actions *in rem* should be able to proceed in one jurisdiction without interference from another. *See* Maj. op. at 846. Relying on Supreme Court case law from 1922, the majority concludes that the "general rule" today is that where an action is strictly *in personam*, there is no objection to a subsequent action in another jurisdiction. Maj. op. at 846. However, the majority fails to recognize that, despite the "general rule" against issuing injunctions in *in personam* actions, there is an exception for complex litigation cases. "In several cases, courts have analogized complex litigation cases to actions in rem." *In re Diet Drugs*, 282 F.3d at 235-36 and 235 n. 12 (citing cases); *see also Battle*, 877 F.2d at 882 ("it makes sense to consider this case, involving years of litigation and mountains of paperwork, as similar to a res to be administered ... This lengthy, complicated litigation is the 'virtual equivalent of a *res*.'" (citations omitted)); *In re Baldwin-United Corp.*, 770 F.2d at 337 (same). Thus, as the district court found, the settlement before us *is* akin to a res and any state court action that might interfere with that court's oversight of it constitutes a serious threat to the federal court's ability to manage the final stages of this complex

litigation. Far from weakening the justification for the application of the "necessary in aid of jurisdiction" exception, the substantial progress of the district court proceedings in resolving this complex dispute made the threat of the Minnesota court all the more serious and made the injunction all the more necessary.

The district court found that "the Minnesota state court's actions seriously impaired the integrity of the court's Order, and directly interfere [d] with and seriously impair[ed][the court's] ability to supervise, implement, enforce, construe and interpret the class action settlement agreement over which [it] retained exclusive jurisdiction." *In re Louisiana-Pacific,* 234 F. Supp. 2d at 1180. Although, as the majority says, "the membership of the class was fixed, the parties' respective rights and liabilities were resolved, the settlement fund had been established and claims were being paid," the district court, aware, *inter alia,* of the prospect that Louisiana-Pacific could decline to continue funding the settlement, found that the risks flowing from ***870** the Minnesota verdict were sufficiently serious that the court's continuing jurisdiction over the settlement would be jeopardized. The majority arbitrarily rejects this finding. It also refuses to recognize that a double recovery for a particular sub-class of the class plaintiffs constitutes a threat to the settlement agreement and the court order, and it is not willing to acknowledge the potential for harm that could result from the proliferation of state-by-state third party benefactor litigation. These potential occurrences, however, as the district court found, constitute serious and substantial threats to the exercise of the court's jurisdiction. It was well within the discretion of the district court to reach that determination.

The majority does not offer any valid explanation as to why the consequences that would flow from entering the Minnesota jury verdict in this complex litigation do not constitute serious threats to the orderly administration of the class settlement. Although my colleagues may disagree with

the district court's decision, all of the court's underlying findings are supported by the record, and the district judge reasonably relied upon the law of our circuit and others. The district judge did not abuse his discretion or commit clear error when he determined that the injunction should issue under the "necessary in aid of jurisdiction" exception. In fact, in my opinion, the district court did a remarkably good job with the law and reached the correct result with respect to both Anti-Injunction Act exceptions on which it relied.

V.

In conclusion, it is clear that Lester's state law claims pursued on behalf of and for the benefit of its customers may be enjoined under both exceptions relied upon by the district judge, the relitigation exception and the "necessary in aid of jurisdiction" exception. The majority's decision not only condones a double recovery by a sub-group of class members in direct contravention of the settlement agreement, but it encourages similar disruptive litigation in other states. Because the Minnesota jury's verdict clearly included damages covered by the settlement, allowing it to stand would circumvent the settlement agreement and seriously impair its integrity, as well as the federal court's ability to supervise, implement, enforce, construe, and interpret the class action settlement over which it has exclusive jurisdiction. In arriving at the determination that the injunction should issue, the district court reasonably relied upon the law of our circuit and others and made underlying findings that were supported by the evidence and which may not be disturbed by an appellate court. I would affirm.

I respectfully dissent.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re LOUISIANA-PACIFIC INNER-SEAL SIDING LITIGATION.	Civil No. 95-879-JO (LEAD). OPINION, ORDER, AND PERMANENT INJUNCTION

[Dec. 13, 2002]

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JONES, District Judge:

This case is before the court on Louisiana-Pacific's ("LP") motion (# 558) to enforce class action settlement (Minnesota). LP seeks an injunction to prevent entry of judgment against LP and in favor of Lester Building Systems and Lester's of Minnesota, Inc. (collectively, "Lester"), on a portion of a Minnesota state court jury verdict that, according to LP, awards damages encompassed by and precluded by the Order, Final Judgment and Decree this court entered on April 26, 1996, approving and implementing a nationwide class action settlement in the above-captioned case.

On December 10, 2002, I held a hearing on LP's motion. Counsel for LP and Lester appeared and argued. After arguments, I asked counsel for LP to prepare and submit a proposed statement of predicate facts for the requested relief, and took LP's motion under advisement. On December ***1172** 11, 2002, the court received LP's submission, and on December 12, 2002, received Lester's objections.

After thoroughly considering the written submissions and arguments of counsel, I am convinced that the injunction LP requests is appropriate and necessary in aid of this court's jurisdiction and to effectuate the class action settlement. Accordingly, I grant LP's motion and enter an injunction enjoining the Minnesota state court from entering judgment on the portion of the jury's damages award that is encom-

passed in and precluded by the class action settlement agreement, as set forth below.

FACTUAL BACKGROUND

1. The Settlement Agreement and the Order, Final Judgment and Decree

On April 26, 1996, this court entered its Order, Final Judgment and Decree ("Order") approving the nationwide class action settlement in this consolidated action. Affidavit of James K. Langdon II ("Langdon Aff."), Ex. 1.

The Order defines the "Class" as "[a]ll persons who have owned, own, or subsequently acquire Property on which [LP siding] has been installed prior to January 1, 1996 * * *." Langdon Aff., Ex. 1, p. 2 n. 2. The Order states that "all members of the Class who do not file timely notices of exclusion release are barred and permanently enjoined from prosecuting 'Settled Claims' * * * against L-P * * *." Ex. 1, p. 5.

The Settlement Agreement, as amended, defines "Settled Claim" to mean

> any claim, * * * damage, loss or cost, action or cause of action, of every kind and description that the Releasing Party [as defined] has or may have, whether known or unknown, asserted or unasserted, latent or patent, that is, has been, could reasonably have been or in the future might reasonably be asserted by the Releasing Party either in the Action or in any other action or proceeding in this Court or any other court or forum, regardless of legal theory, and regardless of the type or amount of relief or damages claimed, against any of the Defendants, arising from or in any way relating to any defects or alleged defects of [LP siding], or any part thereof.

Langdon Aff., Ex. 2, p. 5. "Settled Claim" does not include claims arising from the installation of new siding after January 1, 1996. Langdon Aff., Ex. 2, p. 6.

The Settlement Agreement also contains a release of all claims against persons or entities, including contractors such as Lester, in the chain of distribution, installation, or finishing of LP siding. Langdon Aff., Ex. 2, p. 23.

The Settlement Agreement deals specifically with the period after January 1, 2003. Paragraph 4.9 of the Settlement Agreement provides that if at the end of the seven year period, funds are insufficient to satisfy in full all approved claims filed before January 1, 2003, then the Claims Administrator is to notify LP within 60 days. Within 60 days of notification, LP is to advise class counsel whether it will satisfy the remaining unfunded claims. If it decides to do so, LP must make additional payments into the fund "at the end of each of the next two 12-month periods or until all claims are paid in full." Langdon Aff., Ex. 2, p. 11. If LP elects to continue funding, then "all class members are bound by this Agreement for an additional 24-month period." *Id.* Finally, if LP should fail to make the additional payments, then all class members whose claims remain unsatisfied for a period of 90 days may then "pursue whatever legal ***1173** remedies are available to them without regard to the release * * *." *Id.*

The Order further provides:

> [T]he Court shall retain exclusive and continuing jurisdiction over the Actions and Parties, including all members of the Class, the administration and enforcement of the settlement, and the benefits to the Class, including for such purposes as supervising and implementation, enforcement, construction, and interpretation of the Settlement Agreement.

Langdon Aff., Ex. 1, p. 6. Similarly, the Settlement Agreement provides that "[t]he Court shall retain exclusive and continuing jurisdiction of the Action, all Parties and Settle-

ment Class members, to interpret and enforce the terms, conditions, and obligations of this release." Langdon Aff., Ex. 2, p. 22.

2. Lester's Minnesota Claims

On May 11, 2000, Lester filed a complaint in the McLeod County District Court for the State of Minnesota, styled *Lester Building Systems and Lester's of Minnesota, Inc. v. Louisiana-Pacific Corporation and Canton Lumber Company*, Case No. 43-C6-00-000335 (McLeod County, MN District Court). Langdon Aff., Ex. 3.

As relevant to the present motion, in an amended complaint ("Complaint") filed in August 2002, Lester alleges that it purchased LP siding from 1991 to 1996. Langdon Aff., Ex. 4, ¶ 15. "During the same time period, [Lester] sold directly to end users the [siding] as part of the insul-wall panels and otherwise in the building systems." *Id.* Lester sold products made with LP siding for use in approximately 2600 buildings. Langdon Aff., Ex. 4, ¶ 34.

Lester stopped purchasing LP siding in 1996. Langdon Aff., Ex. 4, ¶ 27. Lester worked with LP to resolve customer complaints concerning failed siding from 1996 until September 1998. Langdon Aff., Ex. 4, ¶ ¶ 29, 32. Lester alleged that it "has received and will continue to receive hundreds of complaints * * * which must be administered and resolved in order to avoid further losses * * *." Langdon Aff., Ex. 4, ¶ ¶ 63 (misrepresentation claim), 136 (indemnity claim).

Under Count XIV, Lester sought declaratory relief concerning the class action settlement, specifically, a declaration that

> in order to avoid further loss to Plaintiffs, L-P is obligated and required: (i) to pay, reimburse, and indemnify Plaintiffs for all monies they pay and expenses they reasonably incur in properly satisfying

> the claims of their dealers and customers arising from defects in and failure of L-P's [siding]; * * *.

Langdon Aff., Ex. 4, ¶ 153.

In the prayer, Lester sought, as relevant, damages "in an amount to be determined at trial," and "an affirmative injunction requiring L-P to resume honoring its warranties and other legal obligations, including, but not limited to reimbursing Plaintiffs for satisfying the claims of Plaintiffs' dealers and customers * * *." Langdon Aff., Ex. 4, p. 34.

LP moved for partial summary judgment shortly before trial, seeking dismissal of all claims against LP for known, unresolved Inner-Seal® claims and all claims for future, unknown Inner-Seal® claims related to hog barns built during the period 1991-1995. In the alternative, LP moved to exclude testimony about such claims at trial. The judge denied both motions. Langdon Aff., Ex. 6, pp. 1-4.

3. The State Court Trial

Trial in Minnesota state court was held from September 24, 2002 through October 14, 2002. Langdon Aff., Ex. 12. During ***1174** trial, a witness, Vance Thomas, testified that based on a comparison of the list of opt-outs and a list of Lester barn purchasers, no barn purchasers had opted out of the nationwide class action settlement. Langdon Aff., Ex. 5, pp. 4-5.

Lester presented testimony from its damages expert Donald Gorowsky that it would cost $13.2 million to repair the LP siding on all of the buildings that Lester built from 1991 through 1996. According to Gorowsky, Lester paid $3.4 million for the siding purchased during that time period. Langdon Aff., Ex. 8, pp. 2-3, 10. Gorowsky testified that

> [a]ll of the buildings that were built from 1991 through 1996 that were sold into the hog industry or hog market and a few others that have been sold in this area, like for horses and dairy that have Inner-

> Seal on them, * * * the amount it will take to repair them less the ones that were sold without a warranty on the Inner-Seal and determined that it will take thirteen point two million dollars to repair those about 2600 remaining buildings.

Langdon Aff., Ex. 8, p. 3. Gorowsky explained that

> [w]e did a verification test to be satisfied with the quantity of Inner-Seal, the square footage that was contained on those 2632 buildings; how much of that is on there and the cost that it will take to repair and replace those buildings.

Id., p. 4. Continuing to explain how he calculated the cost to repair, Gorowsky stated:

> For the building repairs that were made it's just under $200,000.00 or point two million. For the building repairs known to be needed it's estimated at one point five million and for the building repairs to be required for that 2407 buildings it's eleven point five million. All of those together equals thirteen point two that you saw as my first category on the earlier slide * * *.

Id., pp. 3-5.

On redirect, the following colloquy between Gorowsky and Lester's counsel took place:

> Q Now one other question about the class action. We've heard comment that the class action does not include buildings built after January 1, 1996. On your calculation *what is the cost of repairing buildings after January 1, 1996?*
>
> A *There's approximately 409 buildings that were in my claim built after January 1, 1996,* and the square footage for those building s and *the cost*

> *to repair or replace the Inner-Seal comes to just over two million dollars.*

Langdon Aff., Ex. 8, p. 8 (emphasis added).[1]

The testimony of Lester's president, John Hill, clarified that Lester sought damages to repair and replace LP siding covered by the class action settlement:

> A About the best thing we could expect to come out of this is that we finally get to the farmer what he's entitled to, which is he bought a building and expected to have his siding hold up, and that's what we need to make happen and that's why we're here. We're trying to make that result happen.
>
> Q If Lester's prevails what's it going to do with the money?
>
> A *I want each of you to know that we're going to fix these buildings. That's why we're here.* Counsel in some of the lead up to trial has at least left me with some kind of general impression that, you know, is there any guarantee ***1175** that the customer will be taken care of here? And I would ask you to look at all the different people from Lester and its dealers that you've got a chance to meet over the last two weeks and *know that we're here because we want to fix these buildings and that's what we're going to do.*

Langdon Aff., Ex. 9, pp. 2-3 (emphasis added).

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[1] LP is not seeking relief regarding the $2 million repair cost estimate for buildings built after January 1, 1996, only the balance of $11.2 million in repair costs.

LP moved for directed verdict at the close of Lester's case-on the warranty claims, indemnity claims, and as particularly relevant here, "in regard to the class action." Langdon Aff., Ex. 10, pp. 1-2. The judge denied the motion, reasoning as follows:

> Defendant [LP] argues that a directed verdict should be entered in regard to the indemnity claim. This is premature and untimely and need not be addressed until all the evidence is received. This claim rises and falls on the interpretation of the applicability of the class action mechanism for the recovery of the end user and that has not been determined yet. * * *
>
> Defendant [LP] argues that a directed verdict should be entered in regard to the class action. This is premature and untimely and cannot be decided until all evidence is submitted since the Defendant may be submitting expert testimony concerning the mechanics of the class action.

Langdon Aff., Ex., p. 4.[2]

4. The Court's Jury Instructions and the Verdict

At the end of trial, the Minnesota state court instructed the jury, in part, as follows:

> EFFECTS OF CLASS ACTION SETTLEMENT
>
> You have heard evidence of the settlement of a nationwide class action against Louisiana-Pacific. Lester is not a party to that action and therefore the claims that it makes in this case are not barred by

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[2] According LP's Minnesota trial counsel, LP was not required to renew the motion for directed verdict at the close of evidence to preserve the issues raised. Lester's counsel did not dispute this.

the class action settlement. The Court has determined, however, that *one element of Lester's damages, its claims for the cost to repair the buildings with InnerSeal, is barred as to any particular building, unless one of the following exceptions applies:*

(a) the building was constructed on or after January 1, 1996;

(b) the building has or may have a siding performance failure after January 1, 2003; or

(c) the building is one for which claims are submitted prior to January 1, 2003, have not been paid and the class action is not funded in August 2003.

Langdon Aff., Ex. 11, pp. 23-24 (emphasis added).

On October 15, 2002, the jury returned its verdict. After finding against LP on claims for breach of express warranty, breach of implied warranty, fraud and misrepresentation, breach of contract, and promissory estoppel,[3] the jury made the following damages awards:

Cost of Inner-Seal:	$ 3.4 million
Cost to Repair Buildings (those not barred by the class action):	$13.2 million
Lost Profits:	$10.2 million
Cost to Restore Goodwill:	$ 2.8 million

***1176** In question No. 9 of the verdict form, the jury was asked: "Without regard to the class action, what is the total amount of money that would fairly and adequately compensate Lester for the Cost to Repair Buildings (both those in and out of the class action)?" The jury responded: "$13.2 million." Langdon Aff., Ex. 12, pp. 3-4. In other words, the

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[3] The verdict contained no separate finding for the indemnity claim.

jury determined that *none* of the cost to repair was barred by the class action.

5. Current Status

LP has filed post-trial motions in the Minnesota case. On November 18, 2002, the Minnesota state court granted LP's motion to stay entry of judgment, "not merely for 30 days but additionally until the court has heard and determined post-trial motions." *Lester Building Systems and Lester's of Minnesota, Inc. v. Louisiana-Pacific Corporation and Canton Lumber Company,* Case No. 43-C6-00-000335 (Order, Yost, J.). Declaration of Michael H. Simon (filed November 27, 2002), Ex. A. The hearing on LP's post-trial motions is scheduled for December 16, 2002.

Thus, judgment has not yet been entered in the Minnesota state court action.

FINDINGS AND CONCLUSIONS

Lester asserts several arguments in opposition to LP's motion. These are: (1) The court lacks personal jurisdiction over Lester; (2) the court lacks subject matter jurisdiction to grant the requested relief; (3) Lester is not a class member, is not an agent for any class members, and is entitled, under Minnesota law, to recover its costs to repair defective siding; (4) the *Rooker-Feldman* doctrine bars the requested relief; (5) the Full Faith and Credit Act bars the requested relief; (6) depriving Lester of the jury verdict violates due process; and (7) equity favors Lester.

I will address the preliminary matters of jurisdiction first, before I turn to the merits of the controversy. *See In re Diet Drugs,* 282 F.3d 220, 229 (3rd Cir. 2002).

1. Personal Jurisdiction

Lester challenges this court's personal jurisdiction, arguing that Lester was never "served" in this action. *See* Lester's Response to Louisiana-Pacific's Motion, p. 12. Service of process, however, is not required: "Injunctions may be

issued against non-parties under the All Writs Act." *U.S. v. International Broth. of Teamsters*, 907 F.2d 277, 281 (2nd Cir. 1990); *see, e.g., In re Baldwin-United Corp.*, 770 F.2d 328, 338 (2nd Cir. 1985) (All Writs Act grants authority to enjoin and bind non-parties to an action when needed to preserve court's ability to reach or enforce its decision in a case over which it has proper jurisdiction) (*citing*, among other cases, *United States v. New York Tel. Co.*, 434 U.S. 159, 174, 98 S. Ct. 364, 54 L. Ed. 2d 376 (1977)). Where a court has jurisdiction over the subject matter of and the parties to the litigation, as here (see below), the All Writs Act authorizes the court to protect its jurisdiction "even though non-parties may be subject to the terms of the injunction." *International Broth.*, 907 F.2d at 281.

Moreover, the present proceeding does not " 'offend traditional notions of fair play and substantial justice.'" *In re Diet Drugs*, 282 F.3d at 230 (*quoting Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945)). Lester sought to recover relief in Minnesota that had, since 1996, been encompassed by the nationwide class action settlement. Under such circumstances, Lester should reasonably have anticipated being haled into this court. *See* ***1177** *In re Diet Drugs*, 282 F.3d at 231 (where relief sought in Texas state court action was "squarely aimed" at a federal class action in Pennsylvania, plaintiffs in state court action should reasonably have anticipated being haled into federal court) (*quoting World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980)).[4]

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[4] I note that Lester itself sought this court's assistance in June 2002, albeit unsuccessfully, by filing a petition to intervene (# 543) for the purpose of obtaining discovery taken pursuant to the protective order in this case. Defendants Merlo and LP opposed the petition (# 545, 548). Special Master Judge Richard Unis held a hearing on Lester's petition in July 2002, and on July 22, 2002, denied the petition. Thus, Lester itself invoked this court's jurisdiction.

2. Subject Matter Jurisdiction

Lester contends that this court lacks subject matter jurisdiction over the present motion. Lester is mistaken. The basis for jurisdiction is the court's express retention of jurisdiction as set forth in the Settlement Agreement and in the Order. *See Flanagan v. Arnaiz,* 143 F.3d 540, 544 (9th Cir. 1998) ("a basis for jurisdiction may be furnished 'by separate provision (such as a provision "retaining jurisdiction" over the settlement agreement) or by incorporating the terms of the settlement agreement in the order'") (citation omitted); *see also California v. Randtron,* 284 F.3d 969, 974 (9th Cir. 2002). This court has jurisdiction over the class action settlement and over LP, and consequently has subject matter jurisdiction to resolve LP's motion to enforce the settlement through an injunction directed to the Minnesota court.

In short, I conclude that this court has both personal jurisdiction over Lester and subject matter jurisdiction to resolve the present motion. I next turn to the merits of the controversy.

3. Lester's Claims in the Minnesota Action

No one disputes that Lester is not a class member. Lester contends that in seeking repair costs, it was not acting as an agent for class members. While Lester may not have been engaged as a formal agent for its end user customers, Lester's president's trial testimony plainly demonstrates that Lester was, in fact, seeking to recover repair costs for the end user customers, *i.e.,* Lester was asserting damages claims that belonged to the end users. Even the Minnesota court understood this to be the nature of Lester's cost to repair claim. *See* the court's jury instruction entitled "EFFECTS OF CLASS ACTION SETTLEMENT," set forth above.

Lester argues, however, that under Minnesota law the recoverable damages for a defective product include the cost to repair the defective product. Lester cites two cases,

DeGidio v. Ace Eng. Co., 302 Minn. 19, 225 N.W. 2d 217 (1974), and *Ag-Chem Equip. v. Ceram-Traz Corp.*, 1996 WL 229263 (Minn. App. 1996), in support of this proposition. I have studied these cases carefully and find them to be readily distinguishable and thus not controlling. Neither *DeGidio* nor *Ag-Chem* involved factual or legal circumstances similar to those presented here, where the buyer of the defective product, Lester, has been released from liability for repair and replacement of defective siding by its end user customers as part of a nationwide class action settlement. Thus, the risk of the buyer's potential liability to unhappy customers envisioned by the *DeGidio* and *Ag-Chem* courts does not exist under the circumstances presented here.

Consequently, I find and therefore conclude that the Minnesota jury verdict ***1178** wrongly includes damages expressly encompassed in and precluded by the nationwide class action settlement.

4. This Court's Authority to Issue the Requested Injunction

Lester next contends that the Anti-Injunction Act, 28 U.S.C. § 2283, prohibits this court from issuing the requested injunction. I have studied the authorities thoroughly and while mindful that a federal court should not lightly interfere in state court proceedings, conclude that issuance of an injunction is both authorized and necessary to protect the integrity of this court's Order, Final Judgment and Decree in the nationwide class action.

Under the All Writs Act, the court may "issue all writs necessary or appropriate in aid of [its] respective jurisdiction[ ] and agreeable to the usages and principles of law." 28 U.S.C. § 1651; *see Hanlon v. Chrysler Corporation*, 150 F.3d 1011, 1025 (9th Cir. 1998). That power is limited by the Anti-Injunction Act, which generally prohibits federal courts from interfering with proceedings in state courts, unless the circumstances fall within one of three express exceptions:

> The * * * question is whether the circumstances of [the] case fall within one of the three exceptions to the Act-injunctions that: (1) Congress has expressly authorized; (2) are necessary in aid of the federal court's jurisdiction; or (3) are necessary to protect or effectuate the federal court's judgments.

Bennett v. Medtronic, Inc., 285 F.3d 801, 805 (9th Cir. 2002).

The Supreme Court has cautioned that the exceptions are to be narrowly construed and "'should not be enlarged by loose statutory construction.'" *Bennett*, 285 F.3d at 805 (*quoting Atlantic Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 287, 90 S. Ct. 1739, 26 L. Ed. 2d 234 (1970)). "'Any doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy.'" *Bennett*, 285 F.3d at 805 (*quoting Atlantic Coast*, 398 U.S. at 297, 90 S. Ct. 1739). That an injunction *may* issue under the Anti-Injunction Act does not mean that it must; the decision whether to issue an injunction is committed to the court's discretion. *Blalock Eddy Ranch v. MCI Telecommunications Corp.*, 982 F.2d 371, 375 (9th Cir. 1992).

Federal court injunctions staying or barring state court actions have been approved under the second and third exceptions set forth in the Anti-Injunction Act,[5] particularly in situations where, as here, a federal court has retained jurisdiction over a nationwide or global settlement. *See, e.g., Flanagan*, 143 F.3d at 545 ("Where the district court expressly retains jurisdiction to enforce a settlement agreement, and to resolve disputes that may arise under it, litigation in state court 'would pose a significant risk of frustrating the

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[5] The first exception to the Anti-Injunction Act, injunctions "expressly authorized by Act of Congress," has no application to this case.

district court's jurisdiction over the consent judgment'" (citation omitted)).

The first relevant Anti-Injunction Act exception, injunctions "necessary in aid of [federal court] jurisdiction," 28 U.S.C. § 2283, allows federal courts to enjoin state courts in cases where "some federal injunctive relief may be necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the ***1179** federal court's flexibility and authority to decide that case," *Atlantic Coast,* 398 U.S. at 295, 90 S. Ct. 1739, or where the state court proceeding threatens to " 'render the exercise of the federal court's jurisdiction nugatory.'" *Bennett,* 285 F.3d at 806 (citation omitted).

In *Flanagan, supra,* the district court enjoined a state court action for breach of a settlement agreement that the court had approved. The Ninth Circuit affirmed the injunction under both the second and third exceptions, finding that the state court action was an "entirely unjustified attempt" to evade the agreement, "incorporated in a court order and judgment, to submit disputes and enforcement proceedings regarding their settlement to the federal district court." *Flanagan,* 143 F.3d at 546; *see also Hanlon,* 150 F.3d at 1025 (temporary approval of nationwide settlement stayed the state class actions; federal court had power to issue an injunction against continued state proceedings to ensure control over the integrity of the settlement approval process).

In *In re Agent Orange Product Liability Litigation,* 996 F.2d 1425 (2nd Cir. 1993), the Second Circuit approved the district court's removal of an otherwise unremovable state court action[6] "in order to effectuate and prevent the frustra-

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[6] In *Syngenta Crop Protection, Inc. v. Henson,* 537 U.S. 28, 123 S. Ct. 366, 370, 154 L. Ed. 2d 368 n.* (2002), the Court held that the All Writs Act does not furnish removal jurisdiction, but confirmed that a proper procedure is to "apply to the court that approved a settlement for an injunction requiring dismissal of a rival action."

tion of orders it has previously issued in its exercise of jurisdiction otherwise obtained." 996 F.2d at 1431 (internal quotations and citation omitted). The court explained:

> If Agent Orange victims were allowed to maintain separate actions in state court, the deleterious effect on the *Agent Orange I* settlement mechanism would be substantial. The parties to the settlement implicitly recognized this when they agreed that all future suits by class members would be permanently barred. It is difficult to conceive of any state court properly addressing a victim's tort claim without first deciding the scope of the *Agent Orange I* class action and settlement. The court best situated to make this determination is the court that approved the settlement and entered the judgment. * * * In so holding, we are not unmindful of the fact that the All Writs Act is not a jurisdictional blank check which district courts may use whenever they deem it advisable. * * * Given the "exceptional circumstances" surrounding the instant case, issuance was a proper exercise of judicial discretion. The district court was not determining simply the preclusive effect of a prior final judgment on claims or issues expected to be raised in subsequent collateral proceedings; *it was enforcing an explicit, ongoing order against relitigation of matters it already had decided, and guarding the integrity of its rulings in complex multidistrict litigation over which it had retained jurisdiction.*

In re Agent Orange, 996 F.2d at 1431 (emphasis added; citations omitted); *see also In re Diet Drugs*, 282 F.3d at 235-37 and 235 n. 12 ("It is in the nature of complex litigation that the parties often seek complicated, comprehensive settlements to resolve as many claims as possible in one

proceeding. These cases are especially vulnerable to parallel state actions * * * ").[7]

***1180** The second relevant Anti-Injunction Act exception, injunctions "necessary * * * to protect or effectuate [federal court] judgments," 28 U.S.C. § 2283, is known as the "relitigation" exception. The relitigation exception, which applies when the state court has yet to decide the res judicata effect of the federal court judgment, was designed to permit a federal court to "prevent state litigation of an issue that previously was presented to and decided by the federal court." *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 147, 108 S. Ct. 1684, 100 L. Ed. 2d 127 (1988); *Flanagan*, 143 F.3d at 546. The exception is "founded in the well-recognized concepts of *res judicata* and collateral estoppel" and is particularly applicable where, as here, "the district court has expressly retained jurisdiction to construe and enforce a settlement agreement." *Flanagan*, 143 F.3d at 546 (citations omitted).

I have carefully considered this matter, and in the exercise of my discretion conclude that the requested injunction is proper and should issue. As I stated on the record during the hearing, the Minnesota state court was wrong to submit Lester's damages claim for repair costs covered by the class action settlement to the jury for consideration. By doing so,

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[7] Although parallel in personam state court proceedings do not necessarily present "the sort of impediment envisioned by *Atlantic Coast*," *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 806 (9th Cir. 2002), in *In re Diet Drugs*, the Third Circuit noted that courts often analogize complex litigation cases to actions in rem. The "in rem analogy may help to bring into focus what makes these [complex] cases stand apart. In cases in rem, 'the jurisdiction over the same res necessarily impairs, and may defeat, the jurisdiction of the federal court already attached.' * * * Similarly, where complex cases are sufficiently developed, mere exercise of parallel jurisdiction by the state court may present enough of a threat to the jurisdiction of the federal court to justify issuance of an injunction." *In re Diet Drugs*, 282 F.3d 220, 235 n. 12 (3rd Cir. 2002) (citations omitted).

the court permitted the jury to circumvent the settlement agreement and the elaborate negotiated claims resolution procedures contained therein, and create, as LP suggests, a "subclass" of class members whose claims would, if the jury verdict is permitted to stand, enjoy special treatment not available to other class members. Moreover, there is a substantial risk that others in Lester's position, encouraged by the jury verdict, will pursue similar claims, thus further impairing the class action settlement and interfering in this court's stewardship over it.

I find that the Minnesota state court's actions seriously impair the integrity of this court's Order, and directly interfere with and seriously impair my ability to supervise, implement, enforce, construe and interpret the class action settlement agreement over which I have retained exclusive jurisdiction. Moreover, by permitting Lester to pursue to verdict claims for damages plainly covered by the class action settlement, the Minnesota court allowed relitigation of issues already presented to and decided by this court many years ago. I conclude, therefore, that the injunction LP requests is proper under the Anti-Injunction Act and is necessary both in aid of this court's continued jurisdiction and to protect and effectuate this court's Order, Final Judgment and Decree.

5. Full Faith and Credit and the Rooker-Feldman Doctrine

Lester contends that two limitations on federal court power to intervene in state court proceedings preclude the requested injunction. The first limitation is the Full Faith and Credit Act, 28 U.S.C. § 1738, which " 'directs all courts to treat a state court judgment with the same respect that it would receive in the courts of ***1181** the rendering State.'" *In re Diet Drugs*, 282 F.3d at 240 (citation omitted). The Full Faith and Credit Act and the relitigation exception to the Anti-Injunction Act, as construed by the courts, are, however, not incompatible. In *Parsons Steel, Inc. v. First*

Alabama Bank, 474 U.S. 518, 106 S. Ct. 768, 88 L. Ed. 2d 877 (1986), the Supreme Court clarified that the relitigation exception is limited to those situations in which the state court has not yet finally ruled on the merits of the res judicata issue: "Once the state court has finally rejected a claim of res judicata, then the Full Faith and Credit Act become applicable and federal courts must turn to state law to determine the preclusive effect of the state court's decision." 474 U.S. at 524, 106 S. Ct. 768.

The second limitation, the *Rooker-Feldman*[8] doctrine, generally prohibits review of state court decisions by federal courts other than the United States Supreme Court. *In re Diet Drugs*, 282 F.3d at 240. The doctrine prevents review of *final*[9] state court decisions. *Id.* at 241. Like the Full Faith and Credit Act prohibitions, applicability of the *Rooker-Feldman* doctrine depends on the existence of a final state court decision, which does not yet exist in the Minnesota litigation. Moreover, I agree with the Third Circuit's view, expressed in *In re Diet Drugs*, that "where, as here, a federal court's proper exercise of its jurisdiction to manage its cases has the secondary effect of voiding a state court determination, it is not a review of that order for purposes of the *Rooker-Feldman* doctrine." 282 F.3d at 242.

With respect to both the *Rooker-Feldman* doctrine and the Full Faith and Credit Act, Lester takes the position that in denying LP's motion for partial summary judgment and motion for directed verdict, the Minnesota court has already ruled on the res judicata effect of the settlement agreement.

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[8] *See Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983); and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923).

[9] *Doe & Associates Law Offices v. Napolitano*, 252 F.3d 1026 (9th Cir. 2001), on which Lester relies, is inapposite. In *Doe*, the plaintiffs initiated the federal action for the purpose of enjoining ongoing state proceedings, a far different scenario than that presented here.

A close reading of the court's rulings and the jury instructions, however, does not support Lester's position. The court denied the motions based on fact questions, and allowed the cost to repair claims to go to the jury on instructions that attempted to distinguish between siding installed before and after January 1, 1996. The state court's rulings are the subject of pending motions, and I agree with LP that because the Minnesota state court has not yet entered judgment on the jury verdict, its decision is not final. Consequently, I conclude that neither the *Rooker-Feldman* doctrine nor the Full Faith and Credit Act prohibit issuance of the requested injunction in this case.[10]

6. Scope of Injunction

Having concluded that an injunction should issue, I turn to the question of the proper scope. LP proposes that the court enjoin entry of judgment on $14.6 million of the $29.6 million jury verdict. The figure LP proposes includes $11.2 million in repair/replacement costs for siding covered by the class action settlement, plus $3.4 million representing the cost to Lester of the siding.

***1182** I agree with LP that the scope of the injunction should include the damages award of $11.2 million for repair and replacement of siding Lester purchased and installed before January 1, 1996. I do not agree, however, that the $3.4 million in damages the jury awarded Lester for the cost of the siding is similarly improper. That portion of the damages award represents the difference between what Lester paid for the siding ($3.4 million) and its actual value, which the jury must have determined to be $0. LP has failed to present any persuasive argument as to why Lester's

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[10] Lester's two other arguments, that the requested injunction would violate its due process rights and that equity favors Lester, are without merit and will not be separately discussed.

claimed damages for purchase of defective siding are precluded by the class action settlement.

In summary, I conclude that the injunction must be restricted to the $11.2 million in damages awarded to Lester for repair and replacement of siding subject to the class action settlement.

PERMANENT INJUNCTION

Based upon the Findings and Conclusions set forth above, it is hereby

ORDERED AND ADJUDGED that LP's Motion (# 558) to Enforce Class Action Settlement (Minnesota) is GRANTED as follows. In the matter entitled *Lester Building Systems and Lester's of Minnesota, Inc. v. Louisiana-Pacific Corporation and Canton Lumber Company*, McLeod County District Court Case No. 43-C6-00-000335, I hereby permanently enjoin the Minnesota state court from entering judgment on that portion of the jury verdict rendered on October 15, 2002, that awards damages to plaintiffs for costs to repair and replace siding that is subject to this court's Order, Final Judgment and Decree in the nationwide class action settlement. Specifically, I enjoin the Minnesota state court from entering judgment against LP and in favor of Lester Building Systems and Lester's of Minnesota, Inc., in the sum of $11.2 million of the total of $13.2 million in damages the jury awarded under the category "Cost to Repair Buildings" in the jury verdict form.

IT IS SO ORDERED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JAN 20 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

SANDPIPER VILLAGE CONDOMINIUM ASSOCIATION, INC., a Florida corporation and all others similarly situated; Craig Ostergren, co-conservator for Keith Ostergren, a minor, on behalf of themselves and all others similarly situated; Cheryl Ostergren, co-conservator for Keith Ostergren, a minor, on behalf of themselves and all others similarly situated; Keith Ostergren, a minor; Byron Alton; Susan Alton; Cpc Ltd., Washington Real Estate Developer,

Plaintiffs,

v.

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation,

Defendant-Appellee,

Lester Building Systems, a division of Butler Manufacturing Company; Lester's of Minnesota, Inc.,

Respondents-Appellants,

State of Minnesota,

No. 03-35058

D.C. No. CV-95-00879-JO
District of Oregon, Portland

ORDER

Respondent-Amicus,

and

Harry A. Merlo,

Defendant,

State of Minnesota,

Respondent,

Insurance Company of North America; Cigna Insurance Company of North America; Northwestern Pacific Indemnity Company, Agricultural Insurance Company; National Union Fire Insurance Company; Lexington Insurance Company; Granite State Insurance Company,

Defendant-Intervenors,

v.

James W. Gilles; Dale J. Matherly; Douglas Meckling; Michael L. Watts,

Plaintiff-Intervenors.

Before: REINHARDT, SILVERMAN, and CLIFTON, Circuit Judges.

Judges Silverman and Clifton have voted to deny the petition for rehearing and petition for rehearing en banc. Judge Reinhardt has voted to grant the petition for rehearing and petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it. Fed. R. App. P. 35(b).

The petition for rehearing and for rehearing en banc are DENIED.

(3)

No. 05-1346

FILED
MAY 24 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

LOUISIANA-PACIFIC CORPORATION,
Petitioner,

v.

LESTER BUILDING SYSTEMS, A DIVISION OF BUTLER MANUFACTURING COMPANY, and LESTER'S OF MINNESOTA, INC.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS

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QUESTION PRESENTED

In this case, a federal district court permanently enjoined a Minnesota state court from entering judgment on a portion of a Minnesota jury verdict resolving respondents' claims under Minnesota law. The district court thought that the Minnesota court had improperly applied Minnesota law. In fact, the state law claims were fully litigated by the parties in Minnesota, the claims were not encompassed in an earlier judgment in a federal class action, and respondents in any event were not parties to that earlier action and thus cannot be bound by it. Moreover, any alleged error in Minnesota law can be addressed by the Minnesota appellate courts in response to petitioner's appeal, which petitioner remains free to pursue as to this issue. Given all these circumstances, the court of appeals held that the district court erred in entering an injunction against the Minnesota state trial court.

The question presented is whether the court of appeals correctly ruled that the district court's injunction was error.

PARTIES TO THE PROCEEDING

Petitioner Louisiana-Pacific Corporation ("L-P") was the defendant in both actions that gave rise to the present petition. Both actions involved defective L-P siding.

Plaintiffs in the first action were a class of building owners. Their action was filed in the United States District Court for the District of Oregon in 1995. *Sandpiper Vill. Condo. Assoc., Inc. v. Louisiana-Pacific Corp.*, Civ. A. 95-879-JO-LEAD (D. Or.) ("*Sandpiper Village*"). Contrary to L-P's representation, Pet. ii, respondents here, Lester Building Systems, a Division of Butler Manufacturing Company, and Lester's of Minnesota, Inc. (collectively, "Lester"), were not involved in the class action, either as parties or otherwise.

Respondents filed the second action in Minnesota state court in 2000. *Lester Building Sys. v. Louisiana-Pacific Corp.*, No. 43-C6-00-000335 (McLeod County Dist. Ct.). After the jury's verdict in that action but before the entry of judgment, L-P returned to the district court in Oregon and commenced post-judgment proceedings against non-party Lester. L-P sought and obtained an injunction from the *Sandpiper Village* court precluding the Minnesota trial court from entering judgment on a portion of the jury verdict rendered in Lester's favor in Minnesota. Lester appealed, and the Ninth Circuit reversed and vacated the injunction entered by the district court.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

At the time of the trial in the Minnesota state court and the issuance of the injunction by the district court, respondent Lester Building Systems was a division of Butler Manufacturing Company ("Butler"), and respondent Lester's of Minnesota, Inc. was a wholly-owned subsidiary of Butler. Effective April 27, 2004, Butler, which previously had been a publicly-owned corporation, merged with and into BSL

Acquisition Corporation, a Delaware corporation and an indirect wholly-owned subsidiary of BlueScope Steel Limited ("BlueScope"), a corporation organized under the laws of Australia. As a result of the merger, Butler became privately held by BlueScope. The common stock of Butler has been delisted from trading on the New York Stock Exchange. BlueScope Steel is listed for trading on the Australian Stock Exchange.

In August 2004, Lester Building Systems, LLC completed a management buyout of the Lester business from Butler. Lester Building Systems, LLC is a manufacturing company that designs, engineers, and manufactures structures to be erected by independently-owned contractors. Lester Building Systems, LLC is also the parent company of Lester Buildings, LLC, the factory-direct sales and construction arm of the Lester business.

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IN THE

Supreme Court of the United States

No. 05-1346

LOUISIANA-PACIFIC CORPORATION,
Petitioner,

v.

LESTER BUILDING SYSTEMS, A DIVISION OF BUTLER MANUFACTURING COMPANY, and LESTER'S OF MINNESOTA, INC.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS

Respondents Lester Building Systems, a Division of Butler Manufacturing Company, and Lester's of Minnesota, Inc. (collectively, "Lester"), respectfully submit this brief in opposition to the petition for a writ of certiorari filed by Louisiana-Pacific Corporation ("L-P").

OPINIONS BELOW

The opinion of the court of appeals is reported at 428 F.3d 831. Pet. App. 1a-69a. The order of the court of appeals denying rehearing and rehearing *en banc* is unreported. Pet. App. 92a-93a. The district court's order is reported at 234 F.

Supp. 2d 1170. Pet. App. 70a-91a. The decision of the Minnesota trial court on post-trial motions is unpublished. Resp. App. 1a-4a. The decision of the Minnesota Court of Appeals is unpublished, but can be found at Civ. A. A03-48, 2004 WL 291998, at *1 (Minn. Ct. App. Apr. 28, 2004). Resp. App. 5a-21a. The order of the Minnesota Supreme Court denying further review is unpublished. Resp. App. 22a.

INTRODUCTION

This is a unique case that turns on respondent Lester's right under Minnesota law to recover damages for injuries it suffered as a result of petitioner L-P's breach of warranty and fraudulent sale of a defective siding product. Lester used the product as a component in more than 2,600 livestock confinement systems it sold throughout the Midwest during the 1990s. In October 2002, after two-and-a-half years of litigation and a three-week jury trial in Minnesota state court, a jury returned a special verdict finding that L-P, the manufacturer of Inner-Seal siding, had breached its contract with and defrauded Lester, and the jury awarded Lester $29.6 million in damages.

L-P then asked the federal district court in Oregon to enjoin the Minnesota state court from entering judgment on a portion of the jury's verdict. Six years earlier, the district court had approved a class action settlement of claims asserted against L-P by other plaintiffs (some of whom L-P asserted were Lester's customers). L-P claimed that a portion of the jury award was improper under Minnesota law. The district court concluded that the Minnesota court had improperly interpreted Minnesota law, and permanently enjoined the Minnesota court from entering judgment on $11.2 million of the jury's verdict. The court of appeals reversed and vacated the injunction, holding that it violated the Anti-Injunction Act, 28 U.S.C. § 2283. Under the court of appeals' decision,

L-P now must present its arguments regarding Minnesota law in the Minnesota appellate courts.

In seeking review in this Court, L-P contends that the court of appeals' ruling conflicts with other courts' applications of the Anti-Injunction Act. No such conflict exists, however. The Anti-Injunction Act has never been interpreted by any court to permit an injunction in the circumstances presented to the district court below. The court of appeals' ruling properly applied the Anti-Injunction Act for the purpose for which it was intended. The decision rests on a correct construction of Minnesota law and does not warrant review by this Court.

STATEMENT OF THE CASE

A. The Parties And History Of The Dispute.

Lester designs and sells pre-engineered wood buildings for non-residential use. Pet. App. 7a. It has operated in Lester Prairie, Minnesota for more than 50 years. During the 1970s and 1980s, Lester earned substantial good will as a premier supplier of livestock buildings, particularly buildings for hogs.

For decades before 1991, Lester used plywood as the exterior siding on its buildings, with excellent results and without complaints. Between 1989 and 1991, however, L-P promoted its Inner-Seal siding to Lester and represented that it would perform better than plywood and be less expensive. L-P assured Lester that Inner-Seal had been fully tested and had been proven in the field to be superior to plywood. In 1991, Lester agreed to switch from plywood to Inner-Seal. Pet. App. 7a. At no time during the sales cycle did L-P advise Lester of the truth—that L-P had experienced thousands of product failures and had paid millions of dollars to resolve defective Inner-Seal claims. Resp. App. 8a.

Between 1991 and 1996, Lester purchased $3.4 million worth of Inner-Seal and used it as the exterior siding on

approximately 2,600 buildings used to confine hogs and other livestock, mostly in Minnesota and Iowa. Pet. App. 7a.

The construction of confinement buildings is a significant matter for the hog farmers who buy Lester's products, because the cost of constructing such buildings ranges from several hundred thousand to several million dollars. Farmers often take out loans to finance the buildings and justifiably expect Lester to provide a durable, sound product. For the decades that Lester used plywood as the exterior siding, farmers' expectations were met. When Lester switched from plywood to L-P's Inner-Seal, however, its buildings began to fail. Inner-Seal rotted and failed on hog buildings because it could not withstand moisture. Inner-Seal was defective and not fit for use, and L-P knew it.

When Inner-Seal failures on Lester® buildings began to surface, L-P initially honored its warranty obligations to Lester. In September 1998, however, L-P abruptly stopped honoring its warranty obligations, even though the siding was continuing to fail. L-P left Lester to deal with its customers' complaints. At L-P's suggestion, Lester notified its customers that they should seek recovery for any injuries through a class action settlement that L-P had entered into in federal court in Oregon (the "Inner-Seal Settlement"). The Inner-Seal Settlement, however, did not solve Lester's problems with its customers or mitigate its losses; in fact, it made them worse. As discussed further in Section C of this Statement of the Case, the Inner-Seal Settlement, while providing class counsel with more than $26 million in fees and costs for four months of litigation, ultimately reimbursed most owners of defective Inner-Seal only 30% of the amount necessary to repair the siding. As a result of selling thousands of buildings with defective siding, Lester's once-fine reputation was sullied and its sales devastated. Lester's customers refused to consider buying additional Lester buildings unless and until Lester repaired those it had sold with Inner-Seal.

Between 1999 and 2002, the situation grew worse. Inner-Seal failed everywhere; Lester's customers were justifiably angry; L-P refused to help; and the customers' barns were not being repaired. The hog industry is tightly-knit, and it is a "repeat customer" business. Farmers buy one building, and, if satisfied, return to the same supplier the next time. Because Lester had sold its former customers buildings with defective siding, people who had been regular customers for decades switched to Lester's competitors. Many of Lester's customers are farmers with two or three older Lester buildings made with plywood (functioning well), a fourth building with Inner-Seal (rotting), and the fifth and latest building manufactured by a Lester competitor.

B. The Minnesota Lawsuit And Jury Verdict In Favor Of Lester.

After L-P abruptly ended a repair program for Lester's customers' buildings, Lester was forced to file suit in May 2000 against L-P in Minnesota state court. *Lester Building Sys. v. Louisiana-Pacific Corp.*, No. 43-C6-00-000335 (McLeod County Dist. Ct.). In its Complaint, Lester asserted claims for breach of express and implied warranties, breach of contract, and fraud. L-P filed an Answer (and later an Amended Answer) in which it raised the Inner-Seal Settlement as an affirmative defense.

After two-and-a-half years of litigation, the case was tried to a jury in the fall of 2002. The presiding judge was the Honorable LeRoy W. Yost, who served on the state bench for more than 30 years until his death in December 2003. Lester and L-P presented evidence from 30 witnesses, including farmers, builders, executives, and experts, and introduced more than 300 exhibits. One of the witnesses called by L-P was Richard Unis, the Special Master appointed to oversee the Inner-Seal Settlement in the federal district court. Pet. App. 10a. After the close of testimony, the Minnesota court instructed the jury on the law. In particular, the court in-

structed the jury regarding L-P's affirmative defense that the class action settlement precluded Lester from recovering for some of its claimed damages. Pet. App. 10a-11a. On October 15, 2002, the jury returned a verdict in favor of Lester and against L-P in the amount of $29.6 million. The jury found that L-P breached express and implied warranties, breached its contract, and defrauded Lester. Resp. App. 3a-4a.

Turning to damages, the jury filled out its special verdict form as follows:

> 8. What amount of money will fairly and adequately compensate Lester?
>
> | | |
> |---|---|
> | Cost of Inner-Seal: | $ 3.4 million |
> | Cost to Repair Buildings: (those not barred by the class action) | $13.2 million |
> | Lost Profits: | $10.2 million |
> | Cost to Restore Goodwill: | $ 2.8 million |
> | TOTAL: | $29.6 million |
>
> 9. Without regard to the class action, what is the total amount of money that would fairly and adequately compensate Lester for the Cost to Repair Buildings (both those in and out of the class action)? $13.2 million.

Pet. App. 11a n.7; Resp. App. 4a.[1]

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[1] As noted above, L-P argued in Minnesota that the class action settlement was an affirmative defense to a portion of Lester's claim for costs to repair buildings. That affirmative defense failed for at least two reasons. First, Lester was not a class member, and the settlement did not release or bar Lester's own claims for costs to repair. Second, L-P did not present credible evidence to the jury to support the defense. The purported effect of the class action settlement as a limit on Lester's damages was a matter for which L-P had the burden of proof. At trial L-P made the strategic choice not to prove, *inter alia*, which Lester customers were class members, but instead to argue that, by settling the class action, L-P had "hon-

On October 24, 2002, the Minnesota trial judge signed and filed Findings of Fact, Conclusions of Law, and Order for Judgment based on the jury verdict. Under the Minnesota rules of court, the trial judge entered an automatic Stay of Entry of Judgment for thirty (30) days. Pet. App. 12a; Resp. App. 1a. Such a stay allows resolution of post-trial motions without the need to reopen an entered judgment if relief is granted. *See* Minn. R. Civ. P. 58.01 cmt., Minn. R. Civ. P. 58.02.

C. The District Court Enjoins The Minnesota State Court From Entering Judgment In Favor Of Lester On Its Damages For The Cost To Repair.

On November 6, 2002, during the 30-day stay in the Minnesota action, L-P moved in federal court in Oregon to enjoin entry of judgment on a portion of the Minnesota jury verdict. L-P argued that, notwithstanding the jury's verdict, the Inner-Seal Settlement barred a portion of the damages awarded to Lester for the cost to repair buildings.

As noted above, the Inner-Seal Settlement resolved certain claims regarding defective siding that were alleged by consumers in a national class action filed in the district court in 1995. The class consisted of all persons who had owned or acquired a building on which Inner-Seal siding was installed before January 1, 1996. Pet. App. 4a. Although the original complaint stated no federal question, class plaintiffs filed an Amended Complaint on September 27, 1995, adding a (highly dubious) federal claim under the RICO statute, 18 U.S.C. § 1961 *et seq.* On October 13, 1995, L-P answered Plaintiffs' Amended Complaint and five days after that, on October 18, 1995, the case settled. That same day, the district court granted the joint motion of class plaintiffs and L-P

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ored" its warranties to Lester and owed Lester nothing. This "all-or-nothing" strategy did not work and left the record bereft of credible evidence supporting L-P's defense.

for preliminary approval of the class action settlement and granted L-P and class counsel's "stipulated" motion for the intervention by another group of class plaintiffs asserting only state law claims.

On November 14, 1995, the district court approved notice to the class, and on April 26, 1996, the district court entered an Order, Final Judgment, and Decree approving the settlement. Under the terms of the settlement as ultimately approved, L-P agreed to pay at least $275 million over a seven-year period to resolve the claims of building owners concerning failing Inner-Seal, and agreed to pay class counsel fees of $26.25 million (although only four months had elapsed between the filing and settlement of the federal action). On June 12, 1996, the district court issued an order appointing Richard Unis as a Special Master to oversee the Inner-Seal Settlement procedure.

The plaintiff class was defined as "[a]ll persons who have owned, own, or subsequently acquire Property on which Exterior Inner-Seal Siding has been installed prior to January 1, 1996." It is undisputed that Lester is not a member of the plaintiff class and was not a party to the class action. Pet. App. 7a. The Inner-Seal Settlement does not purport to bar or release Lester's claims against L-P.[2] Although the settlement provided no compensation whatsoever to Lester, L-P none-

[2] The Inner-Seal Settlement does not apply to or bar the following: (1) claims of nonperformance that occur after January 1, 2003; (2) claims involving Inner-Seal on buildings constructed after January 1, 1996, regardless of when the claims arise; (3) claims by dealers, builders, and erectors (who are not class members) for damages of any kind, including lost profits, money for out-of-pocket repairs, and other costs; (4) claims by class members who have opted out of the settlement; (5) claims by class members who proceed through the class action arbitration mechanism and as to whom L-P defends on the basis of alleged improper use or installation of Inner-Seal by the builder; and (6) claims involving personal injuries as a result of Inner-Seal failures.

theless argued that release language contained in the Inner-Seal Settlement barred Lester from recovering $14.6 million of the jury verdict—$11.2 million (of the $13.2 million awarded) for the cost to repair failing Inner-Seal, and an additional $3.4 million, which represents the difference between what Lester paid for the siding and its actual value. Pet. App. 90a. L-P sought its injunction in federal court even though its lead Minnesota trial counsel, as well as the Special Master appointed by the district court who testified on behalf of L-P, stated in Minnesota that the federal district court did not have jurisdiction over Lester.

Despite these admissions, and over a multitude of objections by Lester, on December 13, 2002, after a one-hour hearing, the district court held it had "retained" jurisdiction from the original action to preclude the claims of Lester (a non-party) and permanently enjoined the Minnesota state court from entering judgment on $11.2 million of the jury verdict in Lester's favor. Pet. App. 12a & n.9, 91a. The pervasive concern underlying the district court's decision was the court's view that "the judge in Minnesota . . . did wrong." Pet. App. 13a n.10.

Lester had argued in Minnesota, and the trial court there agreed, that Lester had its own claim for damages to repair buildings that was independent of any claim the end customer might have against L-P. Pet. App. 31a. The district court rejected the Minnesota trial court's interpretation of Minnesota law, Pet. App. 83a, and declared that "the Minnesota state court was wrong to submit Lester's damages claim for repair costs [allegedly] covered by the class action settlement to the jury for consideration." Pet. App. 87a. The court held that the injunction requested by L-P was "necessary both in aid of [the district court's] jurisdiction and to protect and effectuate [the district court's] Order, Final Judgment and Decree" approving the Inner-Seal Settlement. On that basis,

the court held that its injunction was not barred by the Anti-Injunction Act, 28 U.S.C. § 2283. Pet. App. 88a.

D. Lester Prevails On Post-Trial Motions And On Appeal In Minnesota.

Before the district court issued the injunction, L-P had filed post-trial motions for judgment notwithstanding the verdict and a new trial in the Minnesota court. In its motions, L-P argued, *inter alia*, that it had proved that a portion of the jury verdict was barred by the Inner-Seal Settlement. On January 17, 2003, a month after the district court issued its injunction, the Minnesota court denied L-P's post-trial motions in their entirety. Thereafter, on January 27, 2003, the Minnesota court issued a revised Order for Judgment stating that Lester was entitled to the full amount of the jury verdict, plus interest: "Plaintiffs [Lester] are entitled to Judgment against defendant [L-P] in the amount of $31,375,862.21." Resp. App. 2a.

The Minnesota court's Order continued:

> [T]he United States District Court for the District of Oregon has issued a permanent injunction enjoining "the Minnesota state court from entering judgment" on "the sum of $11.2 million" of the jury verdict. That injunction is now on appeal. Accordingly, Judgment shall now be entered in favor of plaintiffs and against defendant in the amount of $20,074,424.21 ($31,375,862.21 minus $11,200,000 of the verdict and $101,438 of interest per the injunction), but in the event the injunction is vacated, reversed or lifted, the Judgment herein shall be deemed to be in the full amount of $31,375,862.21 *nunc pro tunc*.

Resp. App. 2a. That same day, the Judgment was docketed by the court administrator in the Minnesota trial court.

L-P appealed to the Minnesota Court of Appeals. Among the issues raised on appeal was whether the court or jury

erred in assessing the effect of the Inner-Seal Settlement on Lester's damages. On February 10, 2004, the Minnesota Court of Appeals affirmed the trial court's denial of L-P's post-trial motions, but declined to rule on the $11.2 million portion of the jury award for repair costs as to which the federal court had enjoined the entry of judgment. Resp. App. 17a-18a. The court affirmed the jury verdict on Lester's fraud claims and held that the economic loss doctrine did not preclude Lester from recovering damages for L-P's fraud and misrepresentation. Resp. App. 12a-17a. The court further held that, as to the $11.2 million in repair costs for which judgment was not entered because of the district court's injunction, L-P was not aggrieved by that portion of the jury award. Pet. App. 15a; Resp. App. 17a. The court stated that "[i]f the [district court's] injunction is reversed, the trial court would amend the current judgment to enter the $11.2 million portion for repair costs, and L-P may appeal from the amended judgment at that point." Resp. App. 18a. The Minnesota Supreme Court denied further review. Resp. App. 22a.

E. The Court Of Appeals Corrects The District Court's Error And Vacates The Injunction.

On appeal of the district court's injunction, the court of appeals reversed. Pet. App. 1a-69a. The court held that the order enjoining entry of judgment on Lester's state law claims violated the Anti-Injunction Act. Lester also asserted numerous other grounds for reversal, including the following: (1) the "retained jurisdiction" provision of the settlement agreement did not create subject matter jurisdiction to adjudicate a portion of Lester's claims for damages; (2) the district court lacked personal jurisdiction over Lester; (3) Lester's rights under the Due Process Clause were violated; (4) the Full Faith and Credit statute, 28 U.S.C. § 1738, required the district court to give effect to the Minnesota verdict and Order for Judgment; (5) federal equity principles precluded relief

in favor of L-P because L-P could and did seek relief in Minnesota; (6) the district court's injunction violated principles of comity and state sovereign immunity; (7) the *Rooker-Feldman* doctrine prevented the district court from reviewing the Minnesota state court decisions; and (8) the record did not support the district court's ruling. Pet. App. 15a-18a. The court of appeals rejected the subject matter jurisdiction argument and any issue about the propriety of service of process. Pet. App. 15a & n.12. Otherwise, as a consequence of its ruling under the Anti-Injunction Act, the court did not reach Lester's other grounds for reversal. Pet. App. 18a & n.15.

The court of appeals began with the language of the Anti-Injunction Act, which precludes a federal court from enjoining "proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. The court of appeals then carefully examined the latter two exceptions and correctly concluded that neither authorized the district court's injunction here.

The court ruled first that the "necessary in aid of jurisdiction" exception does not apply "because the state court action did not threaten the district court's jurisdiction over the Inner-Seal Siding litigation." Pet. App. 22a. The court properly recognized that the "necessary in aid of jurisdiction" exception applies "only when it is required to preserve the court's jurisdiction" and not simply when the state action involves the same subject matter that already is or was before the federal court. Pet. App. 23a. In this case, the court of appeals said, the federal class action was over, and the subsequent Minnesota state court action "could not have interfered with the district court's consideration or disposition of the class claims. Nor could it have interfered with the [district] court's continuing jurisdiction over the settlement." Pet. App. 22a (citation omitted). Specifically, the court observed that before Lester even initiated the Minnesota action, member-

ship in the Inner-Seal Settlement class was fixed and Lester was not a class member; the class action had been settled and payments were being made to class members out of the settlement fund; and Lester "did not seek to join or undo the class, contest the payment of funds to class members or make a claim on the settlement fund." Pet. App. 22a. In these circumstances, the court concluded, relying on this Court's decision in *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 295 (1970), "the state court action did not seriously impair the district court's flexibility and authority to decide the Inner-Seal Siding Litigation or enforce the settlement agreement," and an injunction therefore was not needed to preserve the court's jurisdiction. Pet. App. 23a.

Second, the court of appeals held that the "necessary to protect or effectuate its judgments" exception, also called the "relitigation exception," did not apply because Lester was not a party to the class action and therefore was "entitled to sue L-P in state court for its own injuries." Pet. App. 31a. Quoting this Court's decision in *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 147-48 (1988), the court explained that "the relitigation exception is 'founded in the well-recognized concepts of *res judicata* and collateral estoppel,'" and the exception therefore is "'strict and narrow.'" Pet. App. 28a. The court correctly concluded that "the Minnesota lawsuit did not challenge the *res judicata* effect of the class settlement." Pet. App. 28a-29a.

Stressing the Minnesota trial court's ruling that under Minnesota law Lester has a claim to recover, *inter alia*, damages measured by Lester's cost to repair L-P's defective Inner-Seal siding, the court of appeals properly recognized that "Lester was not acting as a representative of its customers seeking to recover on [their] behalf" but that instead Lester's cost to repair claim is "entirely personal to Lester." Pet. App. 31a. This claim could not have been resolved in the class action

because Lester was not a party to the class action nor was it represented there. Lester therefore could not have had a full and fair opportunity to litigate its Minnesota state law claim in the class action. Pet. App. 31a.

In rejecting the district court's application of the relitigation exception, the court of appeals also emphasized the Minnesota trial court's jury instructions. Specifically, the Minnesota trial court instructed the jury (as L-P had advocated) that "Lester could not be awarded damages for injuries that were covered by the settlement." Pet. App. 32a. As the court of appeals stated, the issue of whether Lester had proved its personal claims for damages, or, conversely, whether L-P had proved that the Inner-Seal Settlement partially barred Lester's damages claim for repair costs, was a question of fact for the jury.

> It is not the province of the district court in Oregon to say that the trial court and jury in Minnesota were wrong in their respective determinations. The proper recourse for L-P was to appeal through the state court system and, if necessary, to petition the United States Supreme Court for review.

Pet. App. 33a. The district court's declaration that "Minnesota law did not permit Lester to recover the costs to repair" and that "the trial court had erred in submitting such a claim to the jury" was "tantamount to a judgment reversing a state court on a matter of state law." Pet. App. 34a. The court of appeals correctly concluded that "allowing L-P to lose on the merits in state court, yet run to federal court for an injunction just days before the state court decision achieved preclusive status, offends the very 'principles of equity, comity, and federalism' that undergird the Anti-Injunction Act." Pet. App. 35a; *see also* Pet. App. 38a (Silverman, J., concurring).

Judge Reinhardt dissented. His opinion disregards the nature of Lester's claim under Minnesota law, a claim personal to Lester for future costs that it would incur for repairs

needed to restore and preserve its business. Rather, the opinion proceeds from the erroneous assumption that the Minnesota jury awarded Lester damages that were barred by the Inner-Seal Settlement. Pet. App. 44a. Indeed, the dissent declares that the nature of Lester's claim for the cost to repair damages under Minnesota law is "inconsequential to the question we must decide—whether the jury's award is inconsistent with the settlement agreement." Pet. App. 52a. As the majority correctly observed in response,

> If we are to take seriously the rule that we do not sit in review of state court determinations, we must accept that Lester was not acting as a representative of its customers or as a conduit funneling money to its customers. We must accept that Lester was acting as a business, injured by L-P and seeking to be made whole through its own claims for its own future damages, and that its damages were proven to the satisfaction of the jury.

Pet. App. 34a n.28 (citation omitted).

ARGUMENT

L-P's entire petition is premised on the alleged existence of a conflict among the circuits regarding the proper application of the Anti-Injunction Act. No such conflict exists. The cases cited by L-P stand for the unremarkable proposition that in different cases involving different facts, different circumstances, and different claims, federal courts may reach different results regarding whether or not the Anti-Injunction Act precludes the issuance of an injunction against state proceedings. Here, the statutory prohibition plainly applied, and neither of the two exceptions cited by the district court authorized the injunction that was issued. This case depends heavily on the specific provisions of Minnesota law, which provides, *inter alia*, that a party in Lester's position has its own claim—separate and independent from any claim of its customers—for repair costs that it may need to incur to restore its business and remedy the adverse business effects

suffered by reason of its distribution of a defective product like L-P's Inner-Seal siding.

Whatever L-P may have thought that it accomplished by cooperating with class counsel in arranging a settlement of the federal action in Oregon soon after it began, L-P could not possibly extinguish any portion of the claims of a non-party like Lester. Nor is that fact the least bit surprising or unfair. L-P's defective siding reduced Lester's once-successful business to a struggling entity, and L-P proposed simply to walk away, leaving Lester with no effective means of regaining its lost customer base. The Minnesota judgment merely compensates Lester for the harm that it suffered by reason of L-P's wrongdoing.

If L-P maintains that any portion of that judgment is inconsistent with Minnesota law, it has an adequate remedy in the Minnesota appellate courts. Indeed, the Minnesota Court of Appeals explicitly held that L-P now can appeal that portion of the judgment that the trial court delayed in entering as a result of the district court's injunction. Such an appeal—not a federal court injunction—is the proper means of addressing any alleged error of Minnesota law that the trial court may have committed.

This case turns on its particular facts and on the provisions of Minnesota law. No disagreement among the federal courts of appeals and no important issue regarding the interpretation of the Anti-Injunction Act is presented. Review in this Court is not warranted.

I. THE COURT OF APPEALS' DECISION DOES NOT CREATE A CONFLICT AMONG THE CIRCUITS.

A. The Court Of Appeals' Decision Does Not Conflict With *Baldwin-United.*

Principally, L-P claims that the court of appeals' decision conflicts with the Second Circuit's ruling in *In re Baldwin-United Corp.*, 770 F.2d 328 (2d Cir. 1985). There, state attorneys general, in their role as *parens patriae* for their citizens, filed notices of intent "to bring a suit seeking restitution for . . . citizens" of their states who had held annuities issued by the defendant. *See id.* at 332. The Second Circuit upheld an injunction against the attorneys general only after concluding that they were intending to sue solely as agents of their citizens, who were members of the plaintiff class in an earlier action: "[t]he states' objective . . . is to enforce state laws authorizing them in their *representative capacities* to seek restitution and monetary recovery from the defendants to be paid over to those . . . states' citizens . . . ." *Id.* at 332-33 (emphasis added).

The court of appeals' holding here does not conflict with *Baldwin-United.* First, as the court of appeals recognized, the parties in *Baldwin-United* admitted that the Anti-Injunction Act did not apply. Pet. App. 30a. L-P tries to ignore this fundamental distinction. It notes that *Baldwin-United* cited several Anti-Injunction Act cases. As the court of appeals here explained, however, "the Anti-Injunction Act was not at issue in *In re Baldwin-United*." Pet. App. 30a n.26. Although the *Baldwin-United* court "looked to caselaw interpreting the Anti-Injunction Act for guidance, it was not constrained by the strict requirements of the relitigation exception. We are not so unconstrained." Pet. App. 30a-31a n.26. As this Court stressed in *Atlantic Coast Line*, 398 U.S. at 287, the exceptions in the Anti-Injunction Act should not "be enlarged by loose statutory construction."

In any event, unlike the state attorneys general enjoined in *Baldwin-United*, Lester asserted its own claim for damages under Minnesota law, not a claim belonging to others. Lester did not assert any derivative claims. Lester is not a government representing its citizens or an "agent" representing class members. Thus, even under L-P's overbroad reading of *Baldwin-United*, there can be no conflict.

The testimony and evidence presented during the Minnesota trial make clear that Lester's recovery was for its own good, not as a surrogate for class members. Lester's business had been severely damaged as a result of the defective L-P Inner-Seal siding. The costs to repair the damaged Lester buildings are a measure of the harm incurred by Lester and what it might cost to restore Lester's reputation and business. Pet. App. 31a ("[a]ccording to the state trial court, however, the prayer for repair costs presented a cognizable state law claim belonging to Lester" and "Lester was not acting as a representative of its customers . . . ."). L-P's attempt to suggest a conflict with *Baldwin-United* disregards this fundamental point.

B. The Court Of Appeals' Decision Does Not Conflict With *Battle*.

L-P also claims that the court of appeals' ruling conflicts with *Battle v. Liberty National Life Insurance Co.*, 877 F.2d 877 (11th Cir. 1989). The district court there entered final judgment under a settlement agreement that settled claims arising from certain burial policies. *See id.* at 879. The court established two settlement classes: (1) owners of Alabama funeral homes from 1954 through 1977; and (2) all insureds with the identified burial policies. Five years after entry of the final judgment in the class action, the surviving family members of two burial policy-holders sued a funeral home, alleging a failure to comply with the terms of the burial policy. The Eleventh Circuit held that the district court prop-

erly enjoined the representatives of the class members from maintaining their state court action.[3]

There is no conflict between the decision below and *Battle*. The court of appeals here did not hold, as L-P suggests, that the entry of a final judgment in the class action, alone, precluded application of the "necessary in aid of jurisdiction" exception of the Anti-Injunction Act. Rather, the court ruled that "[b]ecause the state court action did not seriously impair the district court's flexibility and authority to decide the Inner-Seal Siding litigation or enforce the settlement agreement, an injunction was not necessary to preserve the court's jurisdiction." Pet. App. 23a. Moreover, the state court plaintiffs enjoined in *Battle* were *members of the class*, and their state court claims "on [their] face challenge[d] the propriety" of the district court's settlement of the class action. *See Battle*, 877 F.2d at 881. Here, Lester is not and was not a member of the Inner-Seal Settlement class. Pet. App. 7a, 82a. Lester's Minnesota action did not challenge the propriety of the Inner-Seal Settlement. Pet. App. 22a.

C. The Court Of Appeals' Decision Does Not Conflict With *IBT*.

L-P next asserts that the court of appeals' ruling conflicts with *United States v. International Brotherhood of Teamsters*, 907 F.2d 277 (2d Cir. 1990) ("*IBT*"). The government there filed a civil action against IBT and its General Executive Board alleging various racketeering actions in violation of federal law. Approximately nine months later, the district

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[3] The cases on which the Eleventh Circuit relied for the proposition that the district court can issue an injunction after entry of judgment involved state court actions that were direct challenges to the implementation of the federal judgment in the following settings: distribution of a settlement fund, federal court orders implementing a prior federal consent decree, and federal desegregation orders. This case does not involve any such situation.

court entered a consent decree embodying the settlement agreement among the parties to the litigation. After the consent decree was entered, certain members and local affiliates of IBT initiated litigation in other federal district courts challenging the actions of the officers appointed by the court pursuant to the consent decree. Citing the All Writs Act as authority, the district court enjoined all members and local affiliates of IBT from initiating any legal action challenging the court-appointed officers. The Second Circuit held that injunctions may issue under the All Writs Act against non-parties to prevent those non-parties from interfering with a district court's ability to implement a consent decree, even in cases in which a strict application of *res judicata* would not bar the subsequent action.

There is no conflict with *IBT*. First, *IBT* did not involve the Anti-Injunction Act. In *IBT*, the district court enjoined IBT members and local affiliates from taking legal action in other federal, not state, courts. The Anti-Injunction Act, therefore, was not applicable. Second, the district court was still implementing the consent decree at issue in *IBT* when multiple additional federal actions were initiated by IBT affiliates to challenge that implementation. Here, by contrast, the Inner-Seal Settlement was concluded more than four years before Lester initiated its Minnesota state court action and six years before L-P sought its injunction. As the court of appeals held, Lester was not a class member or a party to the Inner-Seal Settlement and "Lester did not seek to join or undo the class, contest the payment of funds to class members or make a claim on the settlement fund." Pet. App. 22a. The court of appeals' ruling, therefore, does not conflict with *IBT*.

D. The Court Of Appeals' Decision Does Not Conflict With *Diet Drugs*.

Continuing the parade of alleged conflicts, L-P also cites *In re Diet Drugs*, 282 F.3d 220 (3d Cir. 2002). That case involved an attempt by a Texas state court to issue an "inter-

locutory procedural ruling in a case pending before" a federal district court in Pennsylvania. *Id.* at 241. The Texas state court purported to order the federal court to recognize a mass opt out of actual class members from the federal action. It thus sought to make "determinations concerning the identity of the parties to a case" pending in the federal district court. *Id.* The federal district court refused to recognize the order that the state court attempted to enter in the federal proceeding. The court also enjoined counsel for the named plaintiffs in Texas from taking any action to effect the purported opt out. The Third Circuit affirmed. L-P argues that the court of appeals' ruling here conflicts with *Diet Drugs* because *Diet Drugs* held that a settlement in a complex class action is like a *res* over which the court can exercise continuing jurisdiction and control, even after the entry of a final settlement. L-P is incorrect.

First, in *Diet Drugs*, no settlement had been entered at the time the district court issued its injunction against plaintiffs' counsel, and thus, contrary to L-P's assertion, *Diet Drugs* does not stand for the proposition that a district court can enjoin a state court from proceeding by invoking the "in aid of jurisdiction" prong of the Anti-Injunction Act *after* the entry of final settlement of a class action. Second, as recognized by the court of appeals here, when the *Diet Drugs* court issued the injunction precluding counsel from fomenting "opt-outs," it relied on the fact that the settlement negotiations in the federal action were in their sensitive final stages and therefore the order of the Texas state court posed a serious threat to the district court's ability to manage the final stages of the complex litigation. Pet. App. 24a n.22. Here, by contrast, the Inner-Seal Settlement had been finalized six years before L-P sought its injunction. As the court of appeals observed, Lester did not seek to undo the class action settlement. Pet. App. 22a. Third, no one suggests that the Minnesota court tried to enter an order in the class action or tried to compel a federal court to do anything. Finally, in

Diet Drugs, the Third Circuit clearly held that the district court did not "review" the Texas state order, but rather merely refused to implement that order in the federal proceeding. Indeed, because the Texas opt out determination and the federal TRO were issued on the same day, the district court had not even seen the Texas court's order when it issued its original order. These facts are very different from the situation here, in which the district court reviewed the Minnesota court's opinion and the jury verdict and determined that the Minnesota judge was "wrong." Pet. App. 13a n.10. The court of appeals' opinion does not conflict with *Diet Drugs*.[4]

E. The Court Of Appeals' Decision Does Not Conflict With *Syngenta*.

L-P argues that the court of appeals' decision conflicts with this Court's holding in *Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28 (2002). The sole issue decided by this Court in *Syngenta* was whether the All Writs Act provides a basis for jurisdiction to remove a state court action to federal

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[4] L-P also claims a conflict with *Winkler v. Eli Lilly & Co.*, 101 F.3d 1196 (7th Cir. 1997). This contention is without merit. *Winkler* held only that the "necessary in aid of jurisdiction" exception should be construed to enable a federal court to enjoin a concurrent state proceeding that might render the federal court's jurisdiction "nugatory." *Id.* at 1202. That is not the situation here. The Minnesota state proceeding was not concurrent, and it did not in any way render the district court's final judgment in the class action "nugatory." Moreover, the Seventh Circuit in *Winkler* vacated the district court injunction under review, and held that the injunction exceeded the court's authority under the Anti-Injunction Act. In the court's words, "the district court has authority under the Anti-Injunction Act to enjoin only those persons (and their counsel) whose cases are presently part of federal multidistrict litigation, or who were properly part of such multidistrict litigation [in the past] . . . ." *Id.* at 1203. Here, of course, Lester was never a party to the federal class action in Oregon, and the decision in *Winkler* thus supports the impropriety of the district court's injunction.

court. The Eleventh Circuit held that the All Writs Act does not provide a basis for removal, and this Court affirmed. L-P erroneously contends that *Syngenta* held that parties like L-P, who are sued in a state court action that allegedly would undermine a federal settlement, should seek an injunction in the federal court that had retained jurisdiction over the settlement.

The court of appeals' decision here does not and cannot conflict with this Court's holding in *Syngenta*. The court of appeals' decision has nothing to do with whether the All Writs Act provides a basis for federal subject matter jurisdiction. Moreover, the statement that L-P claims was a "holding" in *Syngenta* actually was a comment in a footnote rejecting the notion that removal was "necessary" to protect a previous federal judgment. The Court observed that a party trying to enforce the terms of a settlement agreement previously approved in federal court could (1) apply to the court that approved the settlement for an injunction; or (2) seek a determination from the state court that the action is barred by the judgment of the district court in which the settlement was approved. L-P chose the second option—to make its argument in Minnesota state court. L-P cannot now go back and try the other option, against an entity that was *not a party* to any prior settlement. There is, in short, no conflict with *Syngenta*.

II. THIS CASE TURNS ON ISSUES OF MINNESOTA LAW.

A. Lester's Damages For The Cost To Repair The Defective Inner-Seal Siding Belong To Lester Under Minnesota Law.

L-P attempts to describe this matter as one of national importance. At its core, however, the case turns on the question of the remedies available under Minnesota law.

Lester, a distributor that sold L-P's defective Inner-Seal to its own customers, is entitled to recover under Minnesota law, as damages for L-P's fraud, breaches of warranty, and breach of contract: (1) the difference in the value of the product as accepted and as warranted, Minn. Stat. § 336.2-714; and (2) the cost to repair the defective product. *DeGidio v. Ace Eng'g Co.*, 225 N.W.2d 217, 233 (Minn. 1974); *Ag-Chem Equip. v. Ceram-Traz Corp.*, C9-95-2074, 1996 WL 229263, at *2-3 (May 7, 1996). As to the latter measure of damages, the Minnesota Supreme Court has made the legitimate policy decision that, even if such an award exposes the manufacturer to potential "double liability," the public interest favoring repair of defective products outweighs any potential risk that the customer will receive a windfall. *See DeGidio*, 225 N.W.2d at 223. Accordingly, at the trial in the Minnesota state court, Lester sought to recover all damages to which it was entitled under Minnesota law.

L-P chose to assert in the Minnesota state court that the Inner-Seal Settlement barred Lester's cost of repair damages. L-P first argued the issue in Minnesota in a motion for partial summary judgment. The Minnesota trial court, relying on *DeGidio* and *Ag-Chem*, denied L-P's motion. Specifically, the trial court held that Lester's cost of repair damages involved questions of fact that should be presented to the jury. Both L-P and Lester had the opportunity to present evidence at trial regarding Lester's damages. Lester presented extensive evidence, both through testimony and through documents, regarding its damages. L-P continued to argue during trial that it had honored its warranty to its customers through the Inner-Seal Settlement and that to the extent Lester had suffered damages to its business, they were the result of a "self-inflicted wound" because Lester had not itself funded the repairs of L-P's defective Inner-Seal siding.

The issue of whether Lester's damages were precluded by the Inner-Seal Settlement was presented to the jury in a special verdict form. The jury responded by awarding Lester

$13.2 million for cost of repairs. Pet. App. 11a. L-P, dissatisfied with the jury's determination that Lester's damages were personal to Lester under Minnesota law and not barred by the Inner-Seal Settlement, then turned to the district court for injunctive relief. To the extent L-P believes the jury erred under Minnesota law, it will have the opportunity to press those arguments in the Minnesota appellate system.[5]

B. The Availability Of Lester's Cost To Repair Damages Is An Issue Of Minnesota Law Properly Decided In The Minnesota Courts.

As the court of appeals correctly recognized, the district court impermissibly reviewed the Minnesota state court decision.[6] The court of appeals stated:

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[5] L-P claims that it "was unaware of Lester's plans to flaunt [sic] the Class Settlement and to seek repair costs for the very buildings covered by the settlement until an expert report that issued in June, 2002, two months before trial." Pet. 9 n.2. L-P's statement is difficult to believe because L-P had worked with Lester from 1996 through 1998 on a voluntary basis to repair approximately 90 buildings—without regard to the Inner-Seal Settlement. L-P had no basis to think that Lester would not seek its full recovery under Minnesota law for the defective Inner-Seal that Lester had sold as part of approximately 2,600 buildings. In any event, even if L-P had no idea of the scope of Lester's damages, L-P, by its own admission, had at least two months to decide whether to litigate the effect of the class settlement in Minnesota or to seek an injunction in the district court. L-P chose to assert the issue in Minnesota. After losing in Minnesota, L-P turned to the district court for injunctive relief. L-P claims that it "appropriately balanced" the Minnesota courts and the federal court; this is a lawyer's euphemism for having one's cake and eating it too.

[6] In its opinion issuing the injunction, the district court stated "I have studied [*DeGidio* and *Ag-Chem*] carefully and find them to be readily distinguishable and thus not controlling. . . . Consequently I find and therefore conclude that the Minnesota jury verdict wrongly includes damages expressly encompassed in and precluded by the nationwide class action settlement." Pet. App. 83a. Essentially, the district court concluded that the "judge in Minnesota . . . did wrong." Pet. App. 13a n.10.

> Whether Lester had adequately proven its claims presented a question of fact, however. The trial court left it to the jury, as the finder of fact, to assess damages according to detailed instructions. It is not the province of the district court in Oregon to say that the trial court and jury in Minnesota were wrong in their respective determinations. The proper recourse for L-P was to appeal through the state court system and, if necessary, to petition the United States Supreme Court for review. "[L]ower federal courts possess no power whatever to sit in direct review of state court decisions."

Pet. App. 33a (citations omitted). The court of appeals also correctly ruled that Lester's claims were personal to Lester and could not have been released by the class settlement. The court of appeals stated:

> Because the repair cost claim sought recovery of Lester's damages, albeit voluntary and future damages, Lester was not acting as a representative of its customers seeking to recover on behalf of its customers. The claim was instead entirely personal to Lester. That claim could not have been resolved in the class action together with the class claims because Lester was neither a party to the class action nor represented by a party to the class action. Because Lester did not have a "full and fair opportunity" to litigate its repair costs claim in the class action, that claim was not adjudicated and released by the class settlement. With an essential element of the relitigation exception lacking, the district court had no authority to enter the injunction.

Pet. App. 31a-32a (citations omitted).

The issue of whether the Inner-Seal Settlement barred Lester's cost of repair damages under Minnesota law was determined and rejected by a Minnesota jury in a Minnesota trial. L-P can present the issue to the Minnesota appellate courts. It does not warrant review here.

III. THE CLASS ACTION FAIRNESS ACT DOES NOT ALTER THE INTERPRETATION OF THE ANTI-INJUNCTION ACT.

In the final paragraph of the petition, L-P suggests that the enactment of the Class Action Fairness Act, Pub. L. No. 109-2, 118 Stat. 4 (2005), somehow "magnifie[s]" the "uncertainty created by the decision below." Pet. 21. Nothing in the Class Action Fairness Act purports to modify or affect the proper interpretation of the Anti-Injunction Act. To the extent class or "mass" actions previously litigated in state court will now be litigated in federal court, the Class Action Fairness Act may actually reduce the circumstances that implicate the comity concerns of the Anti-Injunction Act; if an action sought to be enjoined is in federal court rather than state court, the Anti-Injunction Act will not apply. In any event, the Class Action Fairness Act will not increase the number of cases in which litigants framing class action settlements may wish to take account of potential claims by non-class-members under federal or state law.

IV. THE PETITION ALSO SHOULD BE DENIED BECAUSE THE INJUNCTION WAS IMPROPER FOR ADDITIONAL REASONS NOT REACHED BY THE COURT OF APPEALS.

In addition to the Anti-Injunction Act, Lester presented in the court of appeals a number of additional bases for vacating the injunction, as set forth in the Statement of the Case, Section E, *supra*. Because the court of appeals found that the injunction violated the Anti-Injunction Act, it did not reach many of these additional grounds. Pet. App. 18a n.15. Taken alone, each of these arguments provides sufficient grounds for vacating the injunction. Taken together, they demonstrate the extent to which the injunction so clearly and improperly intrudes upon Minnesota's ability to administer its judicial system and resolve conflicts. The court of appeals properly recognized that the Minnesota state court should be permitted

to resolve issues of state law for itself. Pet. App. 34a-35a n.28. Given the various alternative grounds on which the injunction could have been vacated, review of L-P's petition addressing the Anti-Injunction Act is neither necessary nor warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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May 24, 2006

APPENDIX A

STATE OF MINNESOTA DISTRICT COURT
MCLEOD COUNTY
FIRST JUDICIAL DISTRICT

[Filed Jan. 27, 2003]

File No. 43-C6-00-000335

LESTER BUILDING SYSTEMS, a division of Butler Manufacturing Company, and LESTER'S OF MINNESOTA, INC.,
Plaintiffs,

vs.

LOUISIANA-PACIFIC CORPORATION,
Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT

This matter came on for trial before a jury on September 24, 2002, and was tried through October 14, 2002. On October 15, 2002, at the conclusion of deliberations, the jury returned a Special Verdict, a copy of which is attached hereto as Exhibit A. Pursuant to Rule 125 of the General Rules of Practice for District Courts and Rule 58.02 of the Minnesota Rules of Civil Procedure, a Stay of Entry of Judgment was entered for thirty (30) days by this Court on October 24, 2002. By Order dated November 18, 2002, the Stay of Entry of Judgment was extended at defendant's request until post-trial motions were heard and determined. A hearing on post-trial motions was held on December 16, 2002. The Order on Motions deciding the parties' post-trial motions was filed on January 17, 2003, a copy of which is attached hereto as

Exhibit B. Exhibits A and B are hereby fully incorporated by reference and constitute the Findings of Fact and Conclusions of Law in this matter. Accordingly, this Court having finally determined this action,

IT IS HEREBY ORDERED THAT:

Plaintiffs are entitled to Judgment against defendant in the amount of $31,375,862.21. This amount includes the original jury verdict of $29,600,000; $1,519,811 in pre-verdict interest; $189,255 in post-verdict interest; and $66,796.21 in costs and disbursements. However, the United States District Court for the District of Oregon has issued a permanent injunction enjoining "the Minnesota state court from entering judgment" on "the sum of $11.2 million" of the jury verdict. That injunction is now on appeal. Accordingly, Judgment shall now be entered in favor of plaintiffs and against defendant in the amount of $20,074,424.21 ($31,375,862.21 minus $11,200,000 of the verdict and $101,438 of interest per the injunction), but in the event the injunction is vacated, reversed or lifted, the Judgment herein shall be deemed to be in the full amount of $31,375,862.21 *nunc pro tunc*. Post-judgment interest on the amount of the Judgment will hereafter run and be calculated at the annual percentage rate established by the State Court Administrator.

LET JUDGMENT BE ENTERED ACCORDINGLY FORTHWITH.

Dated: Jan. 27, 2003 /s/ L. W. Yost
The Honorable L. W. Yost
Judge of McLeod County
District Court

The above Findings of Fact and Conclusions of Law constitute the Judgment of the Court.

Dated: Jan. 27, 2003 /s/ Robert L. Schmidt
District Court Administrator

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF MCLEOD
FIRST JUDICIAL DISTRICT

[Filed Jan. 27, 2003]

Court File No. C6-00-335

LESTER BUILDING SYSTEMS, a division of Butler Manufacturing Company, and LESTER'S OF MINNESOTA, INC.,
Plaintiffs,

vs.

LOUISIANA-PACIFIC CORPORATION,
Defendant.

SPECIAL VERDICT FORM

We the jury in the above-captioned action, return the following answers to the questions of fact presented to us:

1. Did Lester prove its breach of express warranty claim against Louisiana-Pacific?

   Yes ☒ No ☐

2. Did Lester prove its breach of implied warranty claim against Louisiana-Pacific?

   Yes ☒ No ☐

3. Was it proved that Lester was at fault and that such fault, if any, was a direct cause of its consequential damages?

   Yes ☐ No ☒

   (If your answer to Question 3 is "no," go directly to Question 5. Do not answer Question 4.)

4. Taking all of the fault that contributed as a direct cause to Lester's consequential damages for breach of warranty to be 100%, what percentage do you attribute to:

   Louisiana-Pacific _____%

   Lester _____%

5. Did Lester prove its fraud and misrepresentation claim against Louisiana-Pacific?

Yes ☒ No ☐

6. Did Lester prove its breach of contract claim regarding the Builder's Assistance Program, also referred to as the warranty repair program, against Louisiana-Pacific?

Yes ☒ No ☐

7. Did Lester prove its promissory estoppel claim regarding the Builder's Assistance Program, also referred to as the warranty repair program, against Louisiana-Pacific?

Yes ☒ No ☐

8. What amount of money will fairly and adequately compensate Lester?

Cost of Inner-Seal:	$ 3.4 million
Cost to Repair Buildings: (those not barred by the class action)	$13.2 million
Lost Profits:	$10.2 million
Cost to Restore Goodwill:	$ 2.8 million
TOTAL:	$29.6 million

9. Without regard to the class action, what is the total amount of money that would fairly and adequately compensate Lester for the Cost to Repair Buildings (both those in and out of the class action)?

$13.2 million

(Sign and date the Special Verdict Form and inform the Court Security Officer that you have finished deliberating.)

Dated: 10/15/02 @ 3:05 P.M. /s/ [Illegible]
Foreperson

APPENDIX B

COURT OF APPEALS OF MINNESOTA

No. A03-48

LESTER BUILDING SYSTEMS, a division of Butler Manufacturing Company, *et al.*,

Respondents,

v.

LOUISIANA-PACIFIC CORPORATION,

Appellant.

Feb. 17, 2004
Review Denied April 28, 2004

UNPUBLISHED OPINION

HUDSON, *Judge*.

Appellant challenges the judgment against it as a result of its sale of an allegedly defective pre-fabricated siding material known as Inner-Seal. Appellant argues that the trial court erred by denying its JNOV and new-trial motions regarding respondent's breach-of-warranty and fraud claims; and argues the trial court also erred by denying its JNOV motion regarding the costs respondent paid for the siding. Because the fraud claim is dispositive and supports the entire award on the breach-of-warranty and fraud claims; and because there is a reasonable theory that the evidence supports the verdict that respondent is entitled to recover the costs it paid for Inner-Seal, we affirm the trial court's denial of appellant's JNOV and new-trial motions. Respondent filed a notice of review and argues that the trial court erred by denying its new-trial motion for punitive damages and pre-judgment interest on the lost-profits award. Because the trial court did not clearly

abuse its discretion by denying respondent's new-trial motion for punitive damages, and because the jury exercised its discretion to determine lost profits, we also affirm the trial court's denial of respondent's new-trial motion and its order denying pre-judgment interest.

FACTS

Appellant Louisiana-Pacific Corporation (LP) manufactures building materials and wood products for home and commercial builders. LP's principal place of business is Portland, Oregon. LP manufactured and sold Inner-Seal, which is a product used for exterior siding on homes and buildings.

Respondents Lester Building Systems, a division of Butler Manufacturing Company, and Lester's of Minnesota, Inc. (collectively Lester) operate in Lester Prairie, Minnesota, and design and sell pre-engineered wood buildings for non-residential use through a network of independent builders. Lester supplies livestock-containment buildings, particularly buildings for hogs. Prior to 1991, Lester used plywood as the exterior siding on its livestock buildings.

In 1989, LP and Canton Lumber Company (Canton), a third-party distributor, approached Lester and recommended that Lester switch from plywood to Inner-Seal. LP presented Lester with several brochures and written product descriptions that made statements about the quality of Inner-Seal. LP assured Lester that Inner-Seal was resistant to moisture, was proven to be superior to plywood, and that it came with a written 25-year limited warranty. Over the next 18 months, LP made additional sales visits to Lester, where LP continued to describe Inner-Seal as being superior to plywood. To ensure that LP understood the purpose for which Lester would use Inner-Seal, Lester showed LP its plant and the process it used to manufacture its exterior wall units and took LP to livestock buildings to see Lester's buildings in use. In addition, Lester invited LP to its annual builders/sales

meeting to describe Inner-Seal and its warranties to Lester's independent builders. At this meeting, LP discussed Inner-Seal's qualities, testing, and warranties and assured the builders that Inner-Seal came with a 25-year warranty. Lester contends that LP never mentioned any limitations on the 25-year warranty, nor did the brochures or written descriptions set forth any exclusion of remedies or warranty disclaimers.

Lester contends that it relied heavily on the representations LP made from 1989 to 1991 in deciding to purchase Inner-Seal. Lester's procurement manager asked LP about their experience with Inner-Seal in the field, and LP responded that it had experienced "no problems" with Inner-Seal and that the product was performing well. In addition, Lester sent a letter, dated February 4, 1991, asking LP to confirm that Inner-Seal was suitable for use in Lester's buildings. LP replied with a letter dated February 13, 1991, stating that Inner-Seal was fit for Lester's particular purpose and that Lester would have "no problems with this wall panel."

LP maintains that the warranty that accompanied Inner-Seal disclaimed liability for all incidental and consequential damages, and that the product brochure specifically directed Lester to contact LP for a copy of the "full warranty terms and conditions." LP also argues that Lester negotiated the contract with Canton for the purchase of Inner-Seal and that the negotiations covered price, lead-time, and warranty. As a result, LP claims, the 25-year warranty and its disclaimers "passed through" from LP to Canton to Lester and its customers. Thus, LP argues, as third-party beneficiary of the warranty, Lester is precluded from bringing its claims for consequential and incidental damages.

Lester ultimately purchased more than $3.4 million worth of Inner-Seal from 1991 through 1996 and installed it on more than 3,000 buildings it manufactured and sold (mostly hog barns) to individual builders and farmers. Lester provided its own warranty with these buildings. Lester claims it did not

receive LP's full written warranty with the disclaimers until years after the sales, and thus the exclusions were not an integral part of the transactions and therefore were void.

After Lester had been buying Inner-Seal for several years, reports appeared in publications about lawsuits against LP regarding Inner-Seal. Lester's president testified that LP's CEO assured him that the reported problems had nothing to do with the product Lester was using and Lester had nothing to worry about. Lester continued to buy Inner-Seal.

But during the time Lester was purchasing Inner-Seal, LP received many complaints about the siding's performance. LP received more than 2,500 claims from Minnesota alone. In addition, the Minnesota Attorney General was investigating LP for fraudulent trade practices because Inner-Seal failed to satisfy its product descriptions and warranties. By 1995, the complaints led to the filing of several lawsuits, including a nationwide class-action lawsuit in the United States District Court for the District of Oregon. That litigation led to a settlement between LP and a nationwide class of all persons who owned buildings on which Inner-Seal siding had been installed prior to January 1, 1996. The settlement was approved by the federal court in 1996, and it resolved the claims of all building owners throughout the country in exchange for LP's establishment of (1) an administration system to review and process claims, and (2) a settlement fund that has now paid approximately $500 million to class members in the six years since it was established. As part of the settlement, the owners of buildings with Inner-Seal siding installed before January 1, 1996, released claims against LP and against all those in the chain of distribution, including manufacturers and builders.

In late 1995 or early 1996, Lester began receiving claims from its customers that Inner-Seal was failing on their buildings. Lester notified LP, and the parties conducted joint inspections and agreed on certain repairs. LP initially ad-

dressed the claims under its written 25-year warranty and paid for the repairs on approximately 90 buildings. But LP later insisted that Lester's customers submit their claims through the class-action settlement administration. According to Lester, the settlement administration only made problems worse, because customers who sought compensation from the settlement administration found the process frustrating and the remedy insufficient. But none of Lester's customers opted out of the class settlement, and indeed a few of Lester's customers made claims through the settlement administration.

By late 1996, Lester had received so many complaints that it stopped buying Inner-Seal and switched back to plywood siding. Lester contends that it lost many regular customers and its reputation was ruined. Lester claims that sales dropped from $15 million in 1998 to $4 million in 1999, that its sales have not recovered, and that its business is at the brink of extinction. In 2000, Lester commenced this action against LP, contending that Lester had suffered loss of goodwill and profits as a result of LP's siding and its refusal to fund direct repairs of the barns Lester sold. Lester's claims included breach of contract, breach of express and implied warranties, fraud, misrepresentation, breach of the implied duty of good faith and fair dealing, tortious interference with contract, and various statutory claims. Lester later added a claim seeking punitive damages.

The trial court dismissed several of Lester's claims on LP's early motion for partial judgment on the pleadings; but it left the breach-of-warranty (express and implied) and fraud claims for trial. The case was tried to a jury, with Lester asserting the breach-of-warranty and fraud claims, seeking damages for consequential losses, the purchase price it paid for the siding, and the cost to repair and replace the siding on all of the barns it built using Inner-Seal. LP brought directed-verdict motions at the close of Lester's case and at the close of its own case. The trial court denied both motions; but it

determined that repair and replacement costs were recoverable if (1) the barns had been built after January 1, 1996, or (2) the jury found either (a) that the class-settlement fund would be insufficient to pay an owner's claim or (b) that the barns would suffer defects after January 1, 2003. Otherwise, repair and replacement costs were not recoverable. The trial court included a question on the special-verdict form asking the jury to specify the damages it was awarding for building repair costs and the amount it would have awarded but for the class action. The punitive-damages claim was not submitted to the jury.

The jury found that LP breached express and implied warranties, breached a contract to repair the buildings, and defrauded Lester. The jury returned a special verdict in favor of Lester for $29.6 million, including $13 million in lost profits and goodwill, $13.2 million in repair and replacement costs, and $3.4 million in costs Lester paid for the siding. The jury did not differentiate between the amount it was awarding and the amount covered by the class action. On October 24, 2002, the trial court filed its findings of fact, conclusions of law, and order for judgment, but stayed the entry of judgment pending post-trial motions.

Both parties brought post-trial motions, including LP's motions for judgment notwithstanding the verdict and for a new trial. Lester also moved for a new trial on the punitive-damages issue and a motion for pre-judgment interest on its past lost-profits award. LP sought an injunction from the United States District Court for the District of Oregon to enforce the class-action settlement and to enjoin the entry of judgment on the portion of the jury verdict that awarded damages to Lester for the cost to repair and replace siding. On December 13, 2002, the federal court partially granted that motion and entered an order enjoining the Minnesota trial court from entering judgment against LP for $11.2 million of the jury's $13.2 million verdict for repair and replacement

costs. Lester appealed that ruling to the Ninth Circuit Court of Appeals, and the State of Minnesota filed an amicus brief also seeking to overturn the injunction. That appeal is pending.

The Minnesota trial court issued its order on all post-trial motions, generally denying both parties' motions. On January 27, 2003, the trial court entered a revised order for judgment directing entry of judgment against LP in an amount reduced to reflect the Oregon federal court injunction. The trial court directed that in the event the federal court injunction was vacated, the judgment would be deemed nunc pro tunc in the full amount of the jury verdict with pre-verdict interest. LP filed a notice of appeal on March 6, 2003. Lester filed a notice of review on March 21, 2003. This appeal follows.

DECISION

I

LP makes several arguments in support of its position that the trial court erred in denying its JNOV and new-trial motions with respect to respondent's warranty claims. LP argues the trial court erred in ruling that the warranty exclusion of consequential damages and disclaimer of warranties did not apply to Lester. LP also argues that the trial court erred in ruling that there was a separate contract between LP and Lester and erred in permitting Lester to recover the costs it paid for Inner-Seal. Finally, LP argues that the limited warranty caps any damage award at twice Lester's cost. Lester counters that the warranty exclusion of consequential and incidental damages was not enforceable and contends that LP did not disclaim the implied warranties or limit its liability because the disclaimer of warranties and limitations were not part of the initial sales transactions. Lester also argues that the trial court correctly found that there was a contract between LP and Lester and properly let

the jury decide the terms of the warranty. Finally, Lester argues that the evidence supports awarding the costs it paid for the siding.

This court reviews de novo the denial of a motion for JNOV. *Pouliot v. Fitzsimmons*, 582 N.W.2d 221, 224 (Minn. 1998). Where the trial court has denied JNOV, this court reviews the evidence in the light most favorable to the prevailing party and the denial "must be affirmed, if, in the record, there is any competent evidence reasonably tending to sustain the verdict." *Id.* (quotation omitted). This court will not set aside the verdict "if it can be sustained on any reasonable theory of the evidence." *Id.*[1]

A.

LP argues that the warranty exclusions of consequential and incidental damages apply to Lester's tort claims. Lester counters that LP waived this issue because LP did not raise it below. Lester further argues that if the issue is not waived, the warranty exclusion of consequential damages does not apply to its fraud claim. From our review of the record, it appears that LP raised this argument in its memorandum in support of its motion for partial summary judgment, but failed to seek a jury instruction or assert the argument in its JNOV or new-trial motions. But LP was prevented from pursuing this argument at trial because the trial court ruled the exclu-

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[1] LP also raised many of its JNOV arguments in a motion for a new trial, including arguing that the trial court erred in ruling that the warranty exclusion of consequential damages and disclaimer of warranties did not apply to Lester and that the trial court erred in failing to give LP's proposed jury instruction regarding the class settlement. "On appeal from a denial of a motion for a new trial, the verdict must stand unless it is manifestly and palpably contrary to the evidence, viewed in the light most favorable to the verdict." *ZumBerge v. N. States Power Co.*, 481 N.W.2d 103, 110 (Minn.App.1992), *review denied* (Minn. Apr. 29, 1992). Thus, under either this standard or the JNOV standard, we affirm on Lester's fraud claim.

sions were not communicated to Lester as part of the initial bargain, and therefore Lester was not precluded from recovering consequential, incidental, and breach-of-implied-warranty damages. But we need not reach Lester's breach-of-warranty claims because we hold that the trial court properly denied LP's motion for JNOV on Lester's fraud claim, which we deem dispositive.

Reviewing the denial of JNOV in the light most favorable to the verdict, there is competent evidence reasonably tending to sustain the jury's verdict on Lester's fraud claim. It is well settled that a disclaimer of warranties does not preclude an action for fraud. *See Hydra-Mac, Inc. v. Onan Corp.*, 430 N.W.2d 846, 852 (Minn.App.1988) (holding a disclaimer of warranties does not preclude an action for fraud), *aff'd in part, rev'd in part by Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913 (Minn.1990). Thus, while LP may exclude consequential damages, the exclusion is ineffective as to LP's own fraud. *Clements Auto Co. v. Serv. Bureau Corp.*, 444 F.2d 169, 188-89 (8th Cir.1971) (applying Minnesota law and finding an exclusion of consequential damages is ineffective as to a party's own fraud). Viewing the evidence in the light most favorable to Lester, we conclude the evidence supports the finding that the disclaimer of warranties and exclusion of consequential damages is ineffective as to LP's own fraud. This is true even if we were to accept LP's claim that the warranty exclusion of consequential damages and disclaimers "passed through" Canton to Lester, making it irrelevant—according to LP—that Lester did not actually see the exclusion and disclaimer language until years after the sales were completed. In sum, LP cannot contractually disclaim liability for consequential damages resulting from its fraudulent contract.

LP also argues that the economic-loss doctrine precludes Lester's recovery of damages for fraud and misrepresentation because it prevents recovery in tort when contract remedies are available. Lester counters that the economic-loss statute

exempts claims of fraud. Viewing the evidence in the light most favorable to Lester, we conclude there is competent evidence reasonably tending to sustain the verdict. The economic-loss statute precludes recovery for economic loss for certain torts, but the statute specifically states that claims based on fraud are not barred. *See* Minn.Stat. § 604.10(e) (2002) (stating the economic-loss doctrine shall "not be interpreted to bar tort causes of action based upon fraud or fraudulent or intentional misrepresentation or limit remedies for those actions"). Therefore, the economic-loss statute does not preclude Lester from recovering damages for fraud and misrepresentation.

LP contends, however, that cases applying the economic-loss doctrine have barred recovery on fraud and misrepresentation claims that are: (1) not independent of or collateral to an underlying contract for the sale of goods; and (2) relate to the character and quality of the goods. LP contends that Lester's fraud and misrepresentation claims concern the quality and character of Inner-Seal. Lester counters that the fraud and misrepresentation claims extend beyond the quality and character of Inner-Seal and that the statute does not require that actionable fraud be independent of or collateral to the contract.

LP's position is not supported by the law or the facts in this case. First, the federal cases that LP relies on did not consider the recent amendment to section 604.10, which clearly states that fraud claims are not barred. *See Marvin Lumber & Cedar Co. v. PPG Indus., Inc.*, 223 F.3d 873, 882 (8th Cir.2000) (stating that the amendment to Minn.Stat. § 604.10(e) that states "this section shall not be interpreted to bar tort claims" does not apply to this case); *AKA Distrib. Co. v. Whirlpool Corp.*, 137 F.3d 1083, 1086 n. 3 (8th Cir.1998) (finding that Minn.Stat. § 604.10 does not apply). In addition, the statute makes no distinction between fraud that is and fraud that is not independent of or collateral to the underlying sales

contract; nor does it state that misrepresentation claims relating to the character and quality of the goods are barred. *See* Minn.Stat. § 604.10. Furthermore, the evidence, viewed in the light most favorable to Lester, supports the finding that Lester's fraud and misrepresentation claims extend beyond the quality and character of Inner-Seal. LP represented that it rigorously tested Inner-Seal and it was proven to be superior to plywood; but evidence produced at trial revealed that LP had not performed any tests showing that Inner-Seal was superior to plywood. LP also represented that it had no problems with Inner-Seal in the field, but the evidence showed LP had received and settled numerous claims across the nation. In addition, the evidence showed that at the same time LP was telling Lester that it had no problems with Inner-Seal, the Minnesota Attorney General was investigating LP for deceptive marketing practices. The evidence also revealed that after Lester heard of problems with Inner-Seal, LP falsely assured Lester that the problems had nothing to do with the Inner-Seal that Lester was purchasing and that Lester had no reason to worry. Plainly, this evidence goes to the character and quality of Inner-Seal, but it also demonstrates a pattern of misrepresentation by LP in order to induce Lester to purchase Inner-Seal and to continue purchasing Inner-Seal. In the light most favorable to Lester, the evidence supports the finding that LP's representations extended beyond the quality and character of Inner-Seal. And even if it did not, the economic-loss statute does not specifically bar misrepresentation claims relating to the quality and character of product.

LP also argues that even if the economic-loss doctrine did not bar Lester's fraud and misrepresentation claims, Lester's damages for fraud are limited to its out-of-pocket losses. LP argues that damages for anticipated lost profits are not available in Minnesota on a fraud claim. Lester counters that LP never raised the "out-of-pocket" argument below and this court should not consider it. Lester contends that if this court considers the out-of-pocket loss issue, Lester is entitled to the

full jury award on its fraud claim because the jury did not award Lester future lost profits. A review of the record reveals that LP did not raise the out-of-pocket loss issue below, and this court will not consider arguments not raised in the court below. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn.1988). Even if LP had raised the out-of-pocket issue below, the jury only awarded Lester its actual lost profits and did not award anticipated lost profits. The testimony presented by Lester's damages expert was that Lester suffered $10.2 million in past lost profits, and Lester anticipated losing an additional $2.7 million of profits during 2003. The jury entered $10.2 million on the special-verdict form next to the category entitled "Lost Profits." Viewing the evidence in the light most favorable to the verdict, the jury awarded Lester its actual lost profits and did not award anticipated lost profits.

B.

LP argues that the trial court erred by permitting Lester to recover the cost it paid for the siding because the evidence shows that Lester resold the siding it purchased from LP at a profit, and Lester therefore has no damages. Lester argues that the difference between the actual value of the siding and its value had it been as warranted was $3.4 million, and under Minnesota law, it is entitled to recover the difference between the value of the product as warranted and the value as accepted, regardless of whether the purchaser resells it for an equal or greater price.

It is well settled that a buyer is entitled to recover the difference between the value of the product as warranted and the value of the product as accepted, regardless of whether the buyer resells the product for an equal or greater price. *Miamisburg Twine & Cordage Co. v. Wohlhunter*, 71 Minn. 484, 486, 74 N.W. 175 (1898); *see also DeGidio Oil & Gas Burner Sales & Serv., Inc. v. Ace Eng'g Co.*, 302 Minn. 19, 27-28, 25 N.W.2d 217, 223 (1974) (finding a buyer of a defective product can recover the full price paid for the

product regardless of the profit it realized on resale). Viewing the record in the light most favorable to Lester, there is competent evidence reasonably tending to sustain the verdict. The evidence shows that LP warranted the value of Inner-Seal to be $3.4 million, based on the price Lester paid for Inner-Seal. The evidence also shows that because Inner-Seal could not be used for Lester's intended purposes, it had no value to Lester when Lester purchased it. Because there is a reasonable theory supporting the verdict that Lester is entitled to recover the costs it paid for Inner-Seal, we affirm.

C.

LP argues that the trial court erred in allowing the jury to consider Lester's claim for repair and replacement costs on buildings constructed before January 1, 1996, but contends that the error has been rectified by the injunction issued by the federal district court in Oregon. Therefore, LP contends, this court need not address the issue unless and until the Ninth Circuit reverses that injunction. Lester counters that the jury properly awarded damages for the cost to repair. Lester contends that the issue is ripe for review now and argues that LP has waived the issue since it asked this court not to review the issue.

The judgment that the Minnesota trial court entered does not include the $11.2 million portion for repair costs, because the Minnesota trial court complied with the federal injunction. The Minnesota trial court stated that if the injunction is vacated, the award will be in the full amount (which includes the $11.2 million) nunc pro tunc. Because the $11.2 million for repair costs is not currently part of the judgment, LP is currently not aggrieved by the judgment and cannot appeal it. Therefore, this court need not address the issue. *Twin Cities Metro. Pub. Transit Area v. Holter*, 311 Minn. 423, 425, 249 N.W.2d 458, 460 (1977) (holding a party not aggrieved by a judgment cannot appeal it); *see also Schaust v. Town Bd. of Hollywood Township*, 295 Minn. 571, 572, 204 N.W.2d 646,

648 (1973) (appeal from judgment prior to entry is premature and must be dismissed). It is possible the federal injunction will never be reversed, and therefore LP may never be aggrieved. If the injunction is reversed, the trial court would amend the current judgment to enter the $11.2 million portion for repair costs, and LP may appeal from the amended judgment at that point. *See Duluth Ready-Mix Concrete, Inc. v. City of Duluth*, 520 N.W.2d 775, 777 (Minn.App.1994) (stating that entry of judgment nunc pro tunc cannot operate to cut off a party's appeal rights). LP will, however, be limited to appealing only the issues in the amended judgment. *See Burwell v. Burwell*, 433 N.W.2d 155, 156 (Minn. App.1988) (stating that on appeal from an amended judgment, this court may not review issues decided in the original judgment). The fact that LP will be limited to appealing the issues in the amended judgment will not affect LP's rights, as LP has raised its other issues stemming from the original judgment in this appeal.

II

Lester argues that the trial court abused its discretion in denying Lester's motion for a new trial on the punitive-damages issue.

The trial court has the discretion to grant a new trial and this court will not disturb the decision absent a clear abuse of that discretion. *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn.1990). The verdict must stand unless it is "manifestly and palpably contrary to the evidence, viewed in the light most favorable to the verdict." *ZumBerge*, 481 N.W.2d at 110.

In Minnesota, a party is entitled to a new trial on the issue of punitive damages if it presented clear and convincing evidence that the defendants acted with "deliberate disregard for the rights or safety of others." Minn.Stat. § 549.20, subd. 1(a) (2002); *Hawkinson v. Geyer*, 352 N.W.2d 784,

788-89 (Minn.App.1984). A defendant acts with deliberate disregard if

> the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the rights or safety of others and: (1) deliberately proceeds to act in conscious or intentional disregard of the high degree of probability of injury to the rights or safety of others; or (2) deliberately proceeds to act with indifference to the high probability of injury to the rights or safety of others.

Minn.Stat. § 549.20, subd. 1(b). A defendant is willfully indifferent to the rights of others if the defendant allows a business to "slowly and painfully die" because of an intentional fraud that is concealed. *Hydra-Mac*, 430 N.W.2d at 856.

The evidence here does not rise to the high clear-and-convincing standard to show that LP deliberately disregarded Lester's rights. We acknowledge that there is some evidence to support Lester's argument, including: LP's representation to Lester that LP had no problems with Inner-Seal in the field, when in fact LP had received, and settled, numerous claims; and LP's assurance that Lester had no reason to worry, because the problems Lester inquired about had nothing to do with the Inner-Seal Lester was purchasing. The evidence also suggests, however, that LP was engaged in efforts to ensure Inner-Seal would be well suited to Lester's application and even declined to sell the product for interior applications that LP thought would be inappropriate. The evidence also shows that when Inner-Seal began to fail, LP initially worked with Lester to reimburse Lester for the cost of repairs. The trial court was correct when it stated, "The evidence presented by [Lester] about what took place during the time period that they purchased Inner-Seal in, although reprehensible, did not rise to the level of clear and convincing evidence that there was deliberate disregard on the part of [LP] in its dealings with Lester." Because the trial court did not clearly abuse its

discretion in denying Lester's motion for a new trial on the punitive-damages issue, we affirm.

III

Lester argues it is entitled to pre-judgment interest on the lost-profits award, because the lost profits were readily ascertainable at the time the losses were incurred.

Both statute and common law govern the award of pre-judgment interest. Minn.Stat. § 549.09 (2002); *Trapp v. Hancuh*, 587 N.W.2d 61, 63 (Minn.App.1998). The construction of a statute is a question of law that is reviewed de novo. *Trapp*, 587 N.W.2d at 63. Issues underlying the application of the statute, such as whether a claim is readily ascertainable, are questions of fact that will not be reversed unless clearly erroneous. *Id.*

Minn.Stat. § 549.09 permits the recovery of pre-judgment interest on damages, with various exceptions including future damages, irrespective of whether the damages were ascertainable prior to trial. Minn.Stat. § 549.09, subd. 1(b) (2002); *see Leinhard v. State*, 431 N.W.2d 861, 865 (Minn.1988) (stating that section 549.09 was amended to allow pre-verdict interest irrespective of a defendant's ability to ascertain the amount of damages for which he might be held liable). Pre-judgment interest is not appropriate when calculation of damages rests in whole or in part on the jury's discretion. *Noble v. C.E.D.O., Inc.*, 374 N.W.2d 734, 743 (Minn. App.1985), *review denied* (Minn. Nov. 18, 1985); *Spinett, Inc. v. Peoples Natural Gas Co.*, 385 N.W.2d 834, 841 (Minn.App.1986).

The trial court noted that the jury, in exercising its discretion, determined that lost profits had been proven. The parties' experts presented conflicting testimony on Lester's lost profits. LP's expert testified that the hog market was very soft and attributed that to Lester's drop in profits. Lester's own witnesses, including its former president, published

articles about the collapse of the hog industry. The jury could have found that the state of the hog market contributed to Lester's drop in profits. Because we conclude that the jury exercised its discretion to determine the proper calculation of Lester's lost profits, pre-judgment interest is not appropriate, and we affirm.

Affirmed.

APPENDIX C

IN SUPREME COURT
STATE OF MINNESOTA

[Filed Apr. 28, 2004]

A03-48

LESTER BUILDING SYSTEMS, a division of Butler Manufacturing Company, *et al.*,

Respondents,

vs.

LOUISIANA-PACIFIC CORPORATION,

Petitioner.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Louisiana-Pacific Corporation for further review be, and the same is, denied.

Dated: April 28, 2004

BY THE COURT:

/s/ Kathleen A. Blatz
KATHLEEN A. BLATZ
Chief Justice

Supreme Court, U.S.
FILED
JUN 6 - 2006
OFFICE OF THE CLERK

No. 05-1346

In the

Supreme Court of the United States

October Term, 2005

LOUISIANA-PACIFIC CORPORATION,

Petitioner,

v.

LESTER BUILDING SYSTEMS, A DIVISION OF BUTLER MANUFACTURING COMPANY, and LESTER'S OF MINNESOTA, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

Louisiana-Pacific Corporation ("LP") respectfully submits this reply in support of its petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in favor of Lester Building Systems and Lester's of Minnesota, Inc. (collectively, "Lester").

A. Contrary to Respondent's Overly Narrow Reading of the Case Law, the Court of Appeals' Decision Creates a Conflict Among the Circuits

At issue here is whether a district court may enjoin a portion of a state court proceeding that will "directly interfere with and seriously impair" the district court's continuing jurisdiction over the implementation and enforcement of a complex class action settlement,[1] where the enjoined portion of the state proceeding awards damages for the very same injuries that were previously addressed in the class settlement, thereby creating a special benefit and double recovery for a sub-group of the class members. Under existing precedent from the Second, Third, and Eleventh Circuits, the answer to that question should be in the affirmative.

In the decision below, however, the Ninth Circuit answers that question in the negative. In its interpretation of the Anti-Injunction Act, 28 U.S.C. § 2283, and identical relevant language in the All Writs Act, 28 U.S.C. § 1651(a), the decision below conflicts with the decisions of other circuit courts, including *In re Baldwin-United Corp.*, 770 F.2d 328 (2d Cir. 1985); *Battle v. Liberty National Life Ins. Co.*, 877 F.2d 877 (11th Cir. 1989); *United States v. International Brotherhood of Teamsters*, 907 F.2d 277 (2d Cir. 1990) ("*IBT*"); and *In re Diet Drugs*, 282 F.3d 220 (3rd Cir. 2002). Further review therefore is warranted to resolve this conflict and to maintain the ability of federal courts efficiently and consistently to approve, monitor, and enforce complex settlement agreements in class action lawsuits.

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[1] Perhaps evidencing the complexity of the underlying products liability class settlement, Respondent misstates its terms. Respondent asserts that the settlement "does not apply to or bar . . . claims of nonperformance that occur after January 1, 2003. Br. in Opp. 8 n. 2. The state trial court in Minnesota made the same error. See Pet. App. 11a. The actual class settlement contains no such exception. See Pet. App. 5a n. 2. and Pet. App. 72a-73a.

1. Respondent argues that the Court of Appeals' decision does not conflict with the Second Circuit's decision in *Baldwin-United* because the Anti-Injunction Act did not apply in that case and because "unlike the state attorneys general enjoined in *Baldwin-United,* Lester asserted its own claim for damages under Minnesota law, not a claim belonging to others." See Br. in Opp. 17-18.

In *Baldwin-United,* however, the Second Circuit explicitly relies on Anti-Injunction Act cases in analyzing identical language in the All Writs Act, and it recognizes, as have other courts, that these statutes need to be interpreted consistently. 770 F.2d at 335-36; see also *Carlough v. Amchem Products, Inc.*, 10 F.3d 189, 197 (3rd Cir. 1993) (holding that the provisions of the two acts are applied similarly).

Further, in *Baldwin-United* the Second Circuit also recognized that while the class members themselves did not threaten to bring additional suits, if parties "could derivatively assert the same claims on behalf of [class members] there could be no certaint[y] about the finality of any federal settlement." 770 F.2d at 337.

The derivative claims that the Second Circuit saw as threatening the district court's jurisdiction are the same kind of claims that the district court enjoined in this case. As the dissent below correctly observed:

> Lester clearly sought a double recovery for its customers. . . . At trial in the Minnesota state court, Lester's president testified. He told the jury that the company sought damages to "fix these buildings" and to get each customer "what he's entitled to." . . . There can be no dispute that the $11.2 million enjoined by the district court is an award *for the benefit* of the class member-customers, and not for the benefit of Lester.

Pet. App. 55a-56a (emphasis in original).

The claims enjoined in *Baldwin-United* were not direct claims of the class members; the injunction in that case

extended to claims seeking money damages of any kind as long as they were "arising out of" the facts presented in the district court litigation. See 770 F.2d at 334. That is the same situation here; Lester seeks money damages "arising out of" the same facts presented in the district court litigation, namely property damage on structures owned by Lester's customers. As the dissent below noted,

> whether or not Lester had a "cognizable state law claim" is inconsequential to the question we must decide – whether the jury's award is inconsistent with the settlement agreement. There can be no doubt that it is. They jury awarded damages for the very same repair costs previously provided for in the settlement agreement and district court order.

Pet. App. 52a.[2]

The dissent in this case explicitly notes that the panel decision "create[s] a direct conflict with" *Baldwin-United*. Pet.

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[2] Lester also argues that under Minnesota law it is entitled to recover the cost to repair defective product and cites in support *DeGidio v. Ace Engineering Co.*, 225 N.W.2d 217, 233 (Minn. 1974), and *Ag-Chem Equip. v. Ceram-Traz Corp.*, C9-95-2074, 1996 WL 229263, at *2-3 (Minn. Ct. App. May 7, 1996). Br. in Opp. 24. Neither case, however, supports Lester's proposition here because both cases *explicitly* assume as part of their analysis that the end user of the products at issue would be able to sue the plaintiffs in those cases for recovery of the costs of product repair or replacement. In *DiGidio*, the court concluded that plaintiff DeGidio "had a liability to his vendees to make them whole." 225 N.W. 2d at 222. Similarly, in *Ag-Chem*, the costs of repairing machines already sold to customers was "solely Ag-Chem's liability," and the repair costs awarded to Ag-Chem "accurately reflect[ed the] risk" associated with potential future lawsuits by its customers against Ag-Chem. 1996 WL 229263, at *3. Under the class settlement at issue here, however, all class members fully released all claims against all persons and entities in the chain of distribution, including Lester. Pet. App. 6a. Because Lester faced no risk of legal liability to its customers (unlike *DiGidio* and *Ag-Chem*), there can be no real dispute that the enjoined portion of Lester's verdict was for the benefit of the class members, not to compensate Lester for any risk of potential liability.

App. 58a. This Court should resolve that conflict. As the dissent commented:

> The jury's verdict can be enjoined simply because it awards additional damages to be used for the benefit of class members in satisfaction of claims for which they have already been compensated under the settlement agreement. The fact that a third party brings the action in its own name is without consequence.

Pet. App. 58a.

2. Respondent next argues that the Court of Appeals' decision does not conflict with the Eleventh Circuit's decision in *Battle* because the court of appeals here did not hold that the entry of a final judgment in the class action, alone, precluded application of the "necessary in aid of jurisdiction" exception of the Anti-Injunction Act and, unlike here, the state court plaintiffs enjoined in *Battle* were members of the class. See Br. in Opp. 18-19.

In *Battle*, however, the Eleventh Circuit explicitly held that the entry of a final judgment by a district court *does not* bar that court from enjoining state court action under the "in aid of jurisdiction" exception in the Anti-Injunction Act. *Battle*, 877 F.2d at 881 (citing in support cases from the Second and District of Columbia Circuits). The decision below reaches a contrary conclusion when it states: "Because the litigation was over, the state court action could not have interfered with the district court's consideration or disposition of the class claims." Pet. App. 22a.[3]

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[3] In addition, the implementation of the class settlement over which the district court retained jurisdiction had not yet been concluded when Lester obtained its verdict in Minnesota state court. Lester's trial court verdict was rendered in October 2002. Pet. App. 8a. In the class settlement, however, LP retained the right to make certain decisions into 2003 regarding whether to provide additional funding to pay pending claims. Pet. App. 4a n. 1. The district court entered its permanent

Moreover, although Lester was not itself a member of the underlying class, as the dissent explained, allowing Lester to recover these repair costs for the benefit of the class members would "condone[] a double-recovery by a sub-group of class members in direct contravention of the settlement agreement and encourage[] the proliferation of similar sub-groups and similar lawsuits in other states." Pet. App. 44a.

3. Respondent next argues that the Court of Appeals' decision does not conflict with the Second Circuit's decision in *IBT* because that case did not involve the Anti-Injunction Act and because Lester was not a member of the underlying class. See Br. in Opp. 19-20.

The decision below refused to apply the "protect or effectuate" exception of the Anti-Injunction Act to anything other than cases in which a "rigorous application of *res judicata* principles" would lead to a conclusion that the state suit was barred. Pet. App. 28a. The court held that because Lester was not a party to the settlement, it could not be bound by it, and thus the damages at issue could not be enjoined.

In the Second Circuit's decision in *IBT*, however, the court held under the All Writs Act that injunctions may issue against non-parties in order to prevent those non-parties from interfering with a district court's ability to implement a consent decree. 907 F.2d at 280. That authority, *IBT* concluded, was necessary if the district court was to "protect" and to "effectuate" its judgment. *Id.* at 280, 281. The Second Circuit therefore found authority to issue injunctions under the All Writs Act, and it did so using the precise language of the third exception to the Anti-Injunction Act. *IBT* explicitly holds that the binding effect of a prior judgment is *irrelevant* to a district court's authority to "protect"

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injunction against Lester on December 13, 2002. Pet. App. 70a. LP made its final decision to fund all outstanding claims in the class settlement in September 2003. Pet App. 6a. Thus, in this very practical sense, the district court litigation was not "over" when the district court entered its order against Lester.

and "effectuate" its judgment as long as a subsequent action threatens the implementation of that judgment. *Id.* at 280, 281. There is no reason for that to be any less true under the Anti-Injunction Act than under the All Writs Act.

4. Respondent next argues that the court of appeals' decision does not conflict with the Third Circuit's decision in *Diet Drugs* because, among other reasons, no settlement had been entered at the time that the district court in that case issued its injunction, and the settlement discussions there were in "sensitive final stages." See Br. in Opp. 20-22. Respondent's argument misses the point of *Diet Drugs*.[4]

As the dissent below noted, Pet. App. 66a-68a, *Diet Drugs* held that in complex class litigation, a settlement and the benefits thereof become much like a *res* over which the district court may exercise continuing control under this exception to the Act. See 282 F.3d at 235-36 and n. 12. Moreover, as this Court has long recognized, federal courts may protect their jurisdiction over a *res* under the Anti-Injunction Act. See *Toucey v. New York Life Ins. Co.*, 314 U.S. 118, 135-36 (1941); *Donovan v. City of Dallas*, 377 U.S. 408, 412 (1964).

The idea of a complex settlement as a *res* within the Court's jurisdiction – and therefore protectible even after the entry of a "final" settlement – is one that the Ninth Circuit brushed aside in the decision below, Pet. App. 22a n. 20, but one on which at least the Second, Third, and Eleventh Circuits have relied in affirming the issuance of injunctions in order to protect complex class settlements.[5] It is a sufficient alternative basis for the district court's authority here.

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[4] In addition, the final implementation of the federal class settlement here was similarly in its "sensitive final stages" at the time of the Minnesota state trial verdict in favor of Lester. See 5 n. 3, *supra*.

[5] In *Diet Drugs*, the Third Circuit notes that "several . . . courts have analogized complex litigation cases to actions *in rem*," 282 F.3d at 235-36 and 235 n.12 (citing cases). In *Battle*, the Eleventh Circuit observes that "it makes sense to consider this case, involving years of litigation

B. Respondent's Other Arguments in Opposition to the Petition Are Also Without Merit

Respondent also argues that this case turns on an issue of Minnesota law, that the Class Action Fairness Act has no bearing on this case, and that the petition should be denied because the injunction was improper for additional reasons not reached by the court of appeals. See Br. in Opp. 23-28. Respondent overstates its case, ignores circuit conflicts, and fails to recognize the national importance of the issue here.

1. In the Minnesota lawsuit, Lester was awarded a total verdict of $29.6 million. Pet. App. 11a n. 8. That amount consists of $10.2 million in lost profits, $2.8 million in cost to restore goodwill, $3.4 million in cost of product purchased, and $13.2 million in cost to repair buildings. *Id.* The $13.2 million figure consists of $2 million to repair buildings constructed after the closing for class membership under the class definition, plus $11.2 million to repair buildings covered under the settlement. Pet. App. 13a n. 9.

It is only this last $11.2 million that was enjoined by the district court below. Pet. App 12a-13a. Thus, $18.4 million of Lester's Minnesota verdict is unaffected by the district court's injunction and is not at issue in this petition. All that is at issue here is that limited portion of the state court judgment ($11.2 million) that is "for the very same repair costs previously provided for in the settlement agreement and district court order," that is "for the benefit of the class member-customers" (as confirmed by the trial testimony of Lester's own president), and that constitutes a "double-recovery by a sub-group of class members." Pet. App. 52a, 55a-56a, and 44a (Reinhardt, J., dissenting).

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and mountains of paperwork, as similar to a *res* to be administered . . . This lengthy, complicated litigation is the 'virtual equivalent of a *res*.'" 877 F.2d at 882 (citations omitted). The Second Circuit reaches the same conclusion in *Baldwin-United*, 770 F.2d at 337 (same).

The issue in this case is not whether Minnesota state law would permit this verdict; the issue is whether, under federal law, a district court may enter an injunction against a portion of a state court verdict that the district court has found will "directly interfere with and seriously impair" its continuing jurisdiction over the implementation of a class settlement by awarding to a third party damages for the very injuries that were addressed in the settlement. This question involves the interpretation of the Anti-Injunction Act and the All Writs Act, which contains relevant identical language that must be construed consistently with the first statute.

2. As discussed in the petition, the recently-enacted Class Action Fairness Act, Pub. L. No. 109-2, 118 Stat. 4 (Feb. 18, 2005) (amending 28 U.S.C. § 1332(d) to extend federal jurisdiction to certain class actions alleging more than $5 million in damages), will likely result in federal courts seeing even more filings of complex class action lawsuits, which previously would have been filed in state court. The uncertainty and harm created by the decision below will only be magnified by this development. In combination with the conflict with other circuits generated by the decision below, the importance of this issue merits this Court's attention.

3. Before the court of appeals, Lester presented several alternative arguments in support of its position that the district court erred. The court of appeals rejected Lester's subject matter jurisdiction, personal jurisdiction, and improper service argument, Pet. App. 15a-17a, and Lester has not cross-petitioned. With regard to Lester's other arguments below, the court of appeals did not address them because it held that the district court's injunction cannot be sustained under the Anti-Injunction Act. Pet. App. 18a n. 15. Lester's arguments that were not addressed by the court of appeals have no merit and should not be considered.

4. Finally, as discussed in the petition, the issue presented here has national importance. The panel's decision unnecessarily complicates the process of negotiating, drafting, and implementing class action settlements, and it does so at a time when district courts need more ability, not less, to monitor and enforce such settlements. If the decision below stands, parties in many complex class actions could protect their interests, if at all, only by accomplishing the almost-impossible task of bringing an additional third-party defendant class or sub-classes of all distributors into the class action lawsuit. Thus, the lower court's interpretation of the Anti-Injunction Act's exceptions casts substantial doubt on the ability of parties and federal courts to enforce bargains negotiated and settlements approved in future complex federal class action lawsuits.

C. Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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